

AGENDA

NORTHERN BEACHES LOCAL PLANNING PANEL

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

WEDNESDAY 18 OCTOBER 2023

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



Peter Robinson
Executive Manager Development Assessment

Quorum

A quorum is three Panel members

Conflict of Interest

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

Agenda for the Northern Beaches Local Planning Panel to be held on Wednesday 18 October 2023

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ACKNOWLEDGEMENT OF COUNTRY

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

1.0 APOLOGIES & DECLARATIONS OF INTEREST

Nil

2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 4 OCTOBER 2023

RECOMMENDATION

That the Panel note that the minutes of the Northern Beaches Local Planning Panel held 4 October 2023 were adopted by the Chairperson and have been posted on Council's website.

4.0 PUBLIC MEETING ITEMS

ITEM 4.1	DA2022/1494 - 2A ALLEN AVENUE, BILGOLA BEACH - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE INCLUDING SWIMMING POOL
AUTHORISING MANAGER	Steve Findlay
TRIM FILE REF	2023/626101
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan & Elevations 3 ↓ Clause 4.6

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is the subject of 10 or more unique submissions by way of objection and the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2022/1494 for the demolition works and construction of a dwelling house including swimming pool on land at Lot 20 DP 11978, 2A Allen Avenue, BILGOLA BEACH and Lot A DP 379490, 2A Allen Avenue, BILGOLA BEACH, for the reasons for refusal set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1494
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Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 20 DP 11978, 2 A Allen Avenue BILGOLA BEACH NSW 2107 Lot A DP 379490, 2 A Allen Avenue BILGOLA BEACH NSW 2107
Proposed Development:	Demolition works and construction of a dwelling house including swimming pool
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	Yes
Owner:	Wimbledon 1963 Pty Limited
Applicant:	Joseph Ormachea

Application Lodged:	05/10/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	24/10/2022 to 07/11/2022
Advertised:	Not Advertised
Submissions Received:	22
Clause 4.6 Variation:	4.3 Height of buildings: 45%
Recommendation:	Refusal

Estimated Cost of Works:	\$ 2,706,407.00
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EXECUTIVE SUMMARY

This development application seeks consent for demolition works and construction of a new 3 storey dwelling house, including a swimming pool, basement car parking, front fencing and retention of an existing tennis court.

The proposal was the subject of a pre-lodgement meeting which was not supportive of the development.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) for determination as Council's notification attracted more than 10 unique submissions in objection to the development.

The concerns raised in the 21 objections received broadly relate to:

- Built form non-compliances
- Bulk and scale
- View loss, amenity, visual impacts
- Desired Future Character
- Landscaping, excavation and environmental impacts
- Retention of the tennis court

Following a preliminary assessment of the application, the applicant was afforded an opportunity to amend the proposal to address the various concerns raised by Council. No amended plans were ever formally submitted as the applicants suggested changes would not resolve the issues raised in the Request for Further Information, and so the applicant commenced a Class 1 Deemed Refusal appeal to the NSW Land and Environment Court (Case No. 2023/00151325) which, at the time of writing, remains undetermined. Following commencement of the appeal, the Applicant was afforded further opportunity to amend the proposal. As no amendments were forthcoming, Council has completed its assessment of the Application based on the submitted proposal.

Critical assessment issues include; the proposal's excessive bulk and scale attributable to the building height variations and DCP built form non-compliances; inconsistency with the Bilgola DFC and scenic amenity impacts; heritage, landscape and biodiversity impacts; view loss, solar access and privacy impacts; and the excessive excavation to accommodate car parking and additional basement services/amenities.

The proposal seeks a variation of 45% to the height of buildings development standard. The Applicant's Clause 4.6 written request does not adequately demonstrate that the proposal achieves the relevant objectives of the development standard or that there are sufficient environmental planning grounds to justify the extent of the proposed variation sought. The variation would result in undue visual bulk and scale that would be inconsistent with the desired future character of the Bilgola locality. It is noted that the extent of the breach is exacerbated by the previous excavation of the site, however the irregular topography of the land means that the natural levels of the site are not easily identifiable. Regardless, the proposed three-storey built form, excessive floor slab depths and the roof height all contribute to the unnecessary and inappropriate overall building height.

The retention of the tennis court and the desire to gain water views necessitate the siting of the dwelling towards the rear of the site. The proposal seeks to position a considerably large multi-level dwelling within the remaining relatively small developable area, much of which is located within the rear setback. Rather than sensitive and skilful design that responds to the site, the proposal includes significant bulk excavation and numerous significant built form non-compliances that would cause a range of adverse visual and amenity impacts and prevent Council from supporting the application.

Further, the proposal is not supported by Council's Landscape, Biodiversity or Heritage sections for the reasons discussed in the Internal Referrals section of this report.

Based on the detailed assessment contained in this report, the application is **not supported** and it is recommended that the Panel not support the Clause 4.6 variation and **REFUSE** the application for the reasons provided.

PROPOSED DEVELOPMENT IN DETAIL

The Development Application involves the demolition of the existing dwelling and construction of a 3 storey dwelling house, including a swimming pool and front fence, whilst retaining the existing tennis court.

The proposed development comprises:

Basement

- Four car garage with turntable,
- Plant rooms,
- Storage,
- Cellar,
- Laundry,
- Bathroom,
- Internal stair access and lift.

Level 1

- Four bedrooms and bathrooms,
- Recreational area with gym,
- Internal stair access and lift.

Level 2

- Bedroom,
- Office,
- Two bathrooms,
- Dinning and lounge,
- Internal stair access and lift.

Level 3

- Kitchen,
- Dinning,
- Terrace,
- Elevated pool,
- Internal stair access and lift.

Amendment of Proposal

Following the lodgement of the application, a minor amendment of the proposed driveway gradient was made to address concerns raised by Council's Flooding section.

The proposed amendment is not considered to cause any additional environmental impact and does not require re-notification, in accordance with the Northern Beaches Community Participation Plan.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

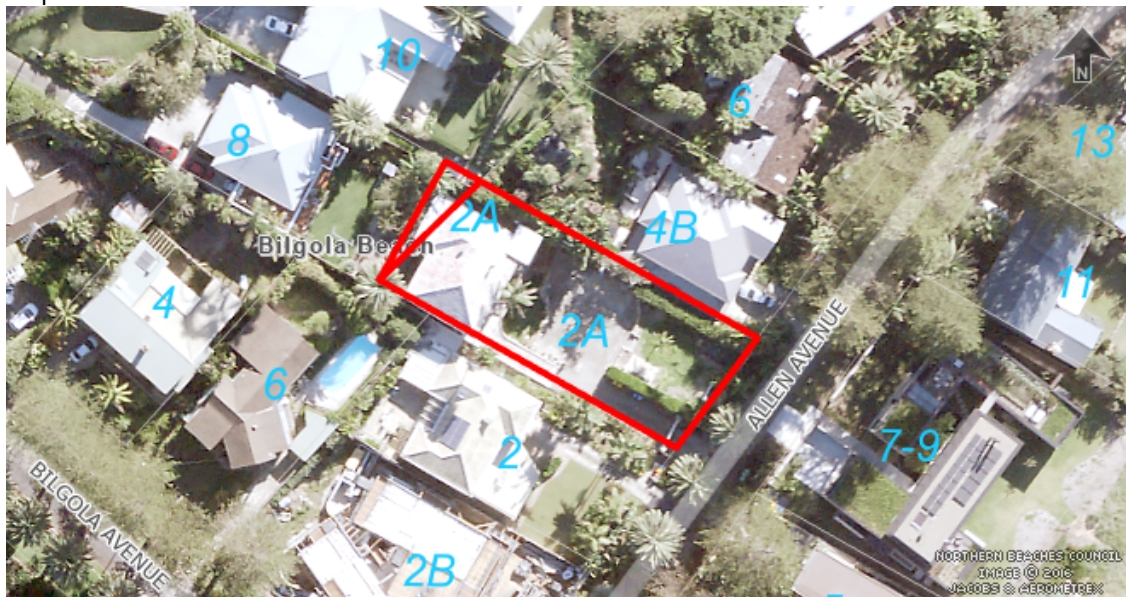
Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 5.10 Heritage conservation
Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils
Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
Pittwater 21 Development Control Plan - A4.3 Bilgola Locality
Pittwater 21 Development Control Plan - B1.4 Aboriginal Heritage Significance
Pittwater 21 Development Control Plan - B3.1 Landslip Hazard
Pittwater 21 Development Control Plan - B4.6 Wildlife Corridors
Pittwater 21 Development Control Plan - B8.1 Construction and Demolition - Excavation and Landfill
Pittwater 21 Development Control Plan - B8.3 Construction and Demolition - Waste Minimisation
Pittwater 21 Development Control Plan - B8.6 Construction and Demolition - Traffic Management Plan
Pittwater 21 Development Control Plan - C1.1 Landscaping
Pittwater 21 Development Control Plan - C1.3 View Sharing
Pittwater 21 Development Control Plan - C1.4 Solar Access
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - C1.6 Acoustic Privacy
Pittwater 21 Development Control Plan - C1.25 Plant, Equipment Boxes and Lift Over-Run
Pittwater 21 Development Control Plan - D3.1 Character as viewed from a public place
Pittwater 21 Development Control Plan - D3.3 Building colours and materials
Pittwater 21 Development Control Plan - D3.7 Side and rear building line
Pittwater 21 Development Control Plan - D3.9 Building envelope
Pittwater 21 Development Control Plan - D3.11 Landscaped Area - Environmentally Sensitive Land
Pittwater 21 Development Control Plan - D3.13 Fences - Flora and Fauna Conservation Areas
Pittwater 21 Development Control Plan - D3.15 Scenic Protection Category One Areas

SITE DESCRIPTION

Property Description:	Lot 20 DP 11978 , 2 A Allen Avenue BILGOLA BEACH NSW 2107
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	Lot A DP 379490 , 2 A Allen Avenue BILGOLA BEACH NSW 2107
Detailed Site Description:	<p>The subject site consists of two allotments located on the western side of Allen Avenue</p> <p>The site is generally regular in shape with a frontage of 18.288m along Allen Avenue and a maximum depth of 48.033m. The site has a surveyed area of 850.38m².</p> <p>The site is located within the C4 Environmental Living zone and accommodates a two-storey dwelling house and a tennis court.</p> <p>The site falls by approximately 9m from the rear boundary of the site towards the Allen Avenue street frontage. The majority of the fall occurs across the rear setback and dwelling footprint, with the front of the site being generally flat.</p> <p>The site is largely built upon by the existing dwelling, tennis court and driveway and does not contain any significant vegetation. Landscaping is limited to palms and smaller planted vegetation.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by detached dwelling houses varying in age and architectural style.</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:

N0039/16 - Alterations and additions include new garage, entertainment room, lift and associated driveway works - Approved 8 April 2016.

BC2020/0091 - Dwelling and Tennis Court - Approved 29 January 2021.

DA2021/1900 - Construction of a fence - Approved 15 December 2021.

PLM2021/0274 - New dwelling-house and swimming pool. was held on 16 November 2021. The advice was not supportive of the proposal due to the extent of non-compliances with height and built form controls, issues arising from retention of the tennis court, view impacts and other amenity concerns.

DA2022/1494 - Demolition works and construction of a dwelling house including swimming pool - Subject application under assessment.

- On 4 May 2023, Council sent an RFI letter to the applicant for them to address concerns relating to building height and built form non-compliances, character and amenity impacts, view loss, excessive excavation and insufficient plan details.
- No formal amended proposal was submitted in response to Council's RFI letter.
- On 11 May 2023, the Applicant commenced Class 1 Appeal in LEC.
- After the Court appeal was lodged, the applicant sought feedback from Council on an amended proposal. However, as the amended scheme did not resolve Council's issues, the applicant was not advised to lodge them on the NSW Planning Portal
- On 4 September 2023, Council again wrote to the Applicant requesting amended plans addressing the concerns raised in the previous RFI letter dated 4 May 2023.
- Amended plans were presented to Council as part of the Without Prejudice process in the LEC appeal, but the various amended schemes still did not resolve Council's concerns.
- Therefore, no formal amended proposal was ever submitted to Council via the Portal, and the Applicant was advised that no further opportunity for amendment of the DA would be provided.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
environmental planning instrument	
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(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 would be addressed via a condition of consent were the application recommended for approval.</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 the form of amended plans to address numerous concerns raised by Council including building height and built form non-compliances, character and amenity impacts, excessive excavation and insufficient plan details.</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. These matters would be addressed via a condition of consent were the application recommended for approval.</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. These matters would be addressed via a condition of consent were the application recommended for approval.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter 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	<p>(i) Environmental Impact</p> <p>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. In summary, the impacts are significant and warrant refusal of the application.</p>

Section 4.15 Matters for Consideration	Comments
and economic impacts in the locality	<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 unsuitable 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	<p>This assessment has found that the proposal is contrary to numerous requirements of the applicable planning controls and would result in a development that causes unreasonable visual and amenity impacts to surrounding properties and the public domain. The extent of these impacts would undermine the desired future character of the locality and be contrary to the expectations of the community.</p> <p>In this regard, the development, as proposed, is not considered to be in the public interest.</p>

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application that included a certificate (prepared by Bushfire Planning Australia, dated 9 August 2022) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report would be included as conditions of consent were the application recommended for approval.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 24/10/2022 to 07/11/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 22 submission/s from:

Name:	Address:
AK Planning	1a Edward Street WILLOUGHBY NSW 2068
Mrs Margaretha Johanna Engelina Morgan	2 Allen Avenue BILGOLA BEACH NSW 2107
Mr George Anthony Condell	PO Box 286 NORTH SYDNEY NSW 2059
Mr Richard Maxwell Osborn Ms Judith Houlton	8 The Serpentine BILGOLA BEACH NSW 2107
Miss Janet Susan Anthes	7 Bilgola Avenue BILGOLA BEACH NSW 2107
Aimee Lutomski	13 Plateau Road AVALON BEACH NSW 2107
Mr Ross James Finley	Po Box 373 MILSONS POINT NSW 1565
Mrs Dorothy Campbell Oag	14 The Serpentine BILGOLA BEACH NSW 2107
Planning Progress	Po Box 213 AVALON BEACH NSW 2107
Mr Philip Edward John Crenigan	19 The Serpentine BILGOLA BEACH NSW 2107
Mr Andrew Wallace Hughes	10 The Serpentine BILGOLA BEACH NSW 2107
Mrs Joan Wallace Hughes	10 The Serpentine BILGOLA BEACH NSW 2107
William Hughes	Address Unknown
Bilgola Beach Residents Association Inc	7 Bilgola Avenue BILGOLA BEACH NSW 2107
Mrs Julie Louise Cerisola	17 Levick Street CREMORNE NSW 2090
Mr Peter Meggitt	10 Allen Avenue BILGOLA BEACH NSW 2107
Mr Doyle Charles Mallett	17 Chamberlain Avenue ROSE BAY NSW 2029
Mr Timothy James Osborne Throsby	9 Argyll Road KENSINGTON, LONDON NSW W8 7DA
Mr Andrew Harkness Clarke	5 Allen Avenue BILGOLA BEACH NSW 2107
Avalon Preservation Trust Incorporated as Avalon Preservation Association	24 Catalina Crescent AVALON BEACH NSW 2107
Mrs Julie Gillmeister	47 Argyle Street BILGOLA PLATEAU NSW 2107
Mrs Emma Victoria Capell	25 Baroona Road CHURCH POINT NSW 2105

The issues raised in the submissions are addressed as follows:

- Built form non-compliances and bulk and scale**

The submissions raised concerns that the proposal is non-compliant with the building height development standard and various DCP built form controls, and that these breaches will cause adverse bulk and scale impacts.

Comment:

This report includes an assessment of the development against the applicable PLEP and P21 DCP built form controls. The proposal seeks extensive variations to these controls and is

recommended for refusal for the reasons detailed in this report. In accordance with the decision in *Merman Investments Pty Ltd v Woollahra Municipal Council*, building height is measured from the '*existing*' ground level, which in this case is taken to be approximately the finished floor levels of the lowest floor of the dwelling, which results in a maximum building height of 11.6m.

These matters are considered to warrant refusal of the application as discussed in this report.

- **Views, amenity, visual and DFC impacts**

The submissions raised concerns that the proposal will give rise to adverse visual and character impacts on the Bilgola locality and will impact the amenity of surrounding properties, including views.

Comment:

The amenity, views, visual and character impacts of the proposal are discussed in detail throughout this report. In summary, this assessment finds that by virtue of the siting, scale and design of the dwelling, the proposal will have an unreasonable level of impact in relation to the character of the locality, and the privacy, solar access and views of surrounding properties.

These matters are considered to warrant refusal of the application as discussed in this report.

- **Landscaping, excavation and environmental impacts**

The submissions raised concerns that the proposal includes inappropriate landscaping, excessive excavation and would result in adverse impacts to the natural environment.

Comment:

As detailed in this report, the proposal includes inadequate landscaping in the context of the site and the proposed development. It is also considered that the extent and volume of the proposed excavation is excessive, and contributes to the inadequacy of the proposed landscaping. The natural environment impacts of the development are detailed in the Internal Referrals section of this report.

These matters are considered to warrant refusal of the application as discussed in this report.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>Not supported.</p> <p>The proposal is not 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

Internal Referral Body	Comments
	<ul style="list-style-type: none"> • C1.1 Landscaping • D3 Bilgola 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 cannot support the application due to the following concerns:</p> <ul style="list-style-type: none"> • An Arboricultural Impact Assessment is required for all trees, including neighbouring trees which may be impacted by the proposed excavation, and in particular the trees along the southern boundary in the neighbouring property which are in close proximity to the excavation for the driveway. The Arboricultural Impact Assessment shall be prepared by an Arborist with minimum AQF Level 5 in arboriculture, and shall determine the existing trees significance, what impact the proposed works will have to existing trees and the appropriate tree protection measures, • The proposed landscaped area cannot satisfy the PDCP controls, and in particular C1.1, and as such landscaped area shall be increased, • All proposed landscaping shall be wholly contained within the property boundaries, and as such the planting in the road reserve shall be removed and cannot be relied upon to satisfy the DCP requirements, • The Landscape Plan does not show the existing street trees; include this information, • Provide more information for the proposed vertical green wall, including but not limited to plant species and type of green wall structure. <p>Landscape Referral can continue the assessment upon receipt of more information.</p>
NECC (Bushland and Biodiversity)	<p>Not supported.</p> <p>The proposal seeks approval for the demolition works and building of a new dwelling.</p> <p>The proposal has been assessed against the following provisions:</p> <ul style="list-style-type: none"> • Pittwater LEP 2021 - Clause 7.6 Biodiversity Protection • Pittwater 21 DCP - Clause B4.6 Wildlife Corridors <p>The site proposed for works has been heavily disturbed and the development is unlikely to impact upon native flora and fauna. However, and as per the Landscape Referral response (17/10/2022) no Arborist report has been submitted with the application to</p>

Internal Referral Body	Comments
	<p>determine whether there will be detrimental impacts to trees present on the road verge and in neighbouring properties.</p> <p>Additionally a number of submissions have brought attention to the development of a tennis court without consent that has impacted on the Landscaping extent in the site.</p>
NECC (Coast and Catchments)	<p>Supported with conditions.</p> <p>The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Resilience and Hazards) 2021 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP.</p> <p>Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore Coastal Management Act 2016 is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the Coastal Management Act 2016.</p> <p>State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Proximity to Littoral Rainforest Area' and Coastal Use Area maps under the State Environmental Planning Policy (Resilience & Hazards) 2021. Hence, Clauses 2.8, 2.11 and 2.12 of the CM (R & H) apply for this DA.</p> <p>Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by BBF Town Planners dated August 2022, the DA satisfies requirements under clauses 2.8, 2.11 and 2.12 of the SEPP R&H.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021.</p> <p>Pittwater LEP 2014 and Pittwater 21 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>Supported with conditions.</p> <p>05/06/2023: Development Engineering have no objections to approval subject to conditions as recommended.</p>

Internal Referral Body	Comments
	<p>03/01/2022: Development Application is for demolition of the existing dwelling and construction of a new three storey dwelling with a basement carpark and swimming pool and retention of existing tennis court.</p> <p>Access New driveway is proposed, and is in compliance with Council's Standard Normal Low Vehicle Crossing Profile.</p> <p>Stormwater Site falls to street. Proposal is to connect site stormwater to a pit present on the driveway of site within public road reserve. It is not clear that this existing pit is a Council pit or not as Council maps do not show the presence of this pit. Also its unclear that where this pit further drains to.</p> <p>Applicant to provide details of this pit and its further connection to Council stormwater infrastructure present within Allen Avenue.</p> <p>Geotechnical The site is located within the H1 landslip hazard zone on Councils Geotechnical Risk Management Map. Geotechnical Assessment Report prepared by Crozier Geotechnical Consultants, Project No.: 2021-06, Dated 28th June 2022 is provided.</p>
NECC (Flooding)	<p>Supported with conditions.</p> <p>The development proposed to demolish the existing dwelling and construct a new three storey dwelling with retention of the existing tennis court. The development is partly within Medium Flood Risk Precinct.</p> <p>Floor levels have been proposed above the site maximum 1% AEP flood depth plus 500mm freeboard, which has been justified as the appropriate Flood Planning level for habitable floors. The driveway crest is above the relevant FPL (5.7mAHD plus 300mm) and the driveway has been conditioned to be protected from overland flow flooding from the tennis court. As per the provided existing survey levels and site layout in the Letter Report (Partridge Hydraulic Services, dated 28 April 2023), the flooded area is contained to the existing tennis court and the development will not have a significant adverse flood affect on neighbouring properties.</p> <p>Subject to conditions, the proposal is compliant with Section B3.11 of the Pittwater DCP and Council is satisfied that the proposal is compliant with requirements of Clause 5.21(2)(a-e) of the Pittwater LEP with consideration of Clause 5.21(3)(a-d) of the Pittwater LEP.</p>
NECC (Riparian Lands and Creeks)	<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;

Internal Referral Body	Comments					
	<p>- State Environmental Planning Policy (Resilience and Hazards) 2021; - Relevant LEP and DCP clauses; and - Northern Beaches Council Water management for development policy.</p> <p><i>Riparian</i> The site is within the littoral rainforest buffer and as such the development must not significantly impact on the biophysical, hydrological or ecological integrity of the littoral rainforest, or the quantity and quality of surface and ground water flows that it receives. Stormwater from the pumped system in the basement must directly connect to a Council Stormwater drainage system, as per the Northern Beaches Council Water Management for Development Policy 5.1(a).</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. Stormwater treatment measures must be maintained at all times in accordance with manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.</p> <p><i>Water Management</i> Rainwater tank as per BASIX certificate.</p> <p><i>Swimming pool water management</i> Pool water from the swimming pool and jacuzzi must drain to the sewerage system to allow water to be correctly processed and to protect the receiving environment.</p>					
Strategic and Place Planning (Heritage Officer)	<p>Not supported.</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 property adjoins a heritage item: Street Trees - Norfolk Island Pines (<i>Araucaria heterophylla</i>) and Canary Island Date Palms (<i>Phoenix canariensis</i>) - Bilgola Avenue and Allen Avenue road reserve, Bilgola Beach To the South is another heritage item: Ocean Rock Pool - Bilgola Beach</td></tr><tr><th>Details of heritage items affected</th></tr><tr><td>Street Trees <u>Statement of Significance</u></td></tr></table>	HERITAGE COMMENTS	Discussion of reason for referral	The proposal has been referred to Heritage as the subject property adjoins a heritage item: Street Trees - Norfolk Island Pines (<i>Araucaria heterophylla</i>) and Canary Island Date Palms (<i>Phoenix canariensis</i>) - Bilgola Avenue and Allen Avenue road reserve, Bilgola Beach To the South is another heritage item: Ocean Rock Pool - Bilgola Beach	Details of heritage items affected	Street Trees <u>Statement of Significance</u>
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Street Trees <u>Statement of Significance</u>						

Internal Referral Body	Comments										
	<p>The Street Trees - Norfolk Island Pines (<i>Araucaria heterophylla</i>) and Canary Island Date Palms (<i>Phoenix canariensis</i>) are a defining landscape element for Bilgola Beach, but also for many ocean beaches in Pittwater and along the coast of NSW and southern QLD. These pines are significant for their historic association with early settlement and as local cultural plantings, in some instances dating from the 1930's period. The Norfolk Island Pine plantings also have a high level of visual, environmental and aesthetic value.</p>										
	<p><u>Physical Description</u></p> <p>Many trees have achieved dramatic proportions and scale although many are threatened by recreational and erosional pressures. In this location they have been planted in association with the exotic Canary Island Date Palm.</p>										
	<p>Ocean Rock Pool</p> <p><u>Statement of Significance</u></p> <p>This Ocean rock pool a representative ocean pool created during the Depression years. It is a social meeting place for the local community. Its position, on the shore at the edge of the sea, gives it high aesthetic appeal. It is important for the recreational activity of swimming.</p>										
	<p><u>Physical Description</u></p> <p>The pool is roughly rectangular in shape running in a north/south direction. The western side is broadly curved outwards to create a shallow wading area which is sectioned off from the main part of the pool by a simple chain and stainless steel post fence. The main part of the pool accommodates an eight-laned 50 metre long swimming course. The pool has been located on a flattened rock shelf with mass concrete walls used to create sufficient depth. A broad concrete concourse has been provided along the western side which separates the pool from the nearby rock face. A 3 metre high chain wire fence has been erected to afford protection for people using the pool from falling rocks. Ramped access into the wading area is provided at the northern end of the pool. The pool is filled using an electric pump which feeds from a channel located at the southern end of the pool. A release valve empties the pool from its northern end. Stainless steel uprights and interconnecting chains create a simple safety barrier to the three exposed edges of the pool. The pool is well maintained with evidence of periodic repairs to the concrete. No separate amenities exist for the pool.</p>										
	<table><tr><th colspan="3">Other relevant heritage listings</th></tr><tr><td>SEPP (Biodiversity and Conservation) 2021</td><td>No</td><td></td></tr><tr><td>Australian Heritage Register</td><td>No</td><td></td></tr></table>			Other relevant heritage listings			SEPP (Biodiversity and Conservation) 2021	No		Australian Heritage Register	No
Other relevant heritage listings											
SEPP (Biodiversity and Conservation) 2021	No										
Australian Heritage Register	No										

Internal Referral Body	Comments		
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	Yes	The ocean pool is on the trust's register
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	N/A	
	Consideration of Application		
	<p>The proposal seeks consent for the construction of a new dwelling including an excavated driveway to an underground garage with three levels of accommodation above. The proposal also includes a new driveway and cross over that runs between two Canary Island Date Palms in the road reserve outside this property. This driveway is both raised to address flood impacts and then excavated to provide access to the underground garage. Others works around this area include storm water pits and pipes, a rainwater tank, and the construction of a new pedestrian access area and landscaping works.</p> <p>Heritage notes the comments from Landscape around the lack of an arborist report addressing the impact of the proposal on trees such as those on adjoining properties and in the road reserve. Heritage concurs with the need for an arborist report to assess the impact of the entire total proposal (driveway, excavation/filling, storm/rainwater, pedestrian access, landscaping, fencing etc) on adjoining heritage trees and provide tree protection measures. This must also include a tree root investigation around the Canary Island Palms that establishes the extent of their root system with subsequent protection measures. Without this report, the impact of the proposal on the heritage significant street trees cannot be completed and Heritage cannot be satisfied under Clause 5.10(4) of the Pittwater LEP 2014 that the impact has been fully assessed and considered. Heritage is subsequently not satisfied that the outcomes of the Heritage Conservation clauses B1.1 and B1.2 of the Pittwater 21 DCP to minimise impacts on heritage items have been met.</p> <p>Heritage notes that the proposed building will have an impact on the streetscape containing the heritage street trees due to its design and appearance. The dwelling will be significantly raised above the level of the adjoining lower scale properties at 2 and 4B Allen Avenue and the opportunities for screening vegetation to soften its impact are reduced by the tennis court. In this regards the proposal is considered to not respond to control B1.2 Heritage Conservation in the Pittwater DCP as the proposal has not been designed to respect and complement the heritage street trees in terms of the building's height, envelope and proportions and its relationship to the streetscape and views through the trees to the site. A more skillful design that better reflects the heritage tree</p>		

Internal Referral Body	Comments
	<p>streetscape and height limits is required. Such a building will also reduce the view loss impacts for adjoining residents to the heritage listed street trees and views beyond to the heritage listed Bilgola Beach Ocean Rock Pool and better reflect the controls of B1.2 and B1.1 in the Pittwater DCP.</p> <p>Therefore Heritage is unable to support the proposal due to the unknown impact on the trees from the works proposed in the road reserve and nearby on the property as well as the impacts on the streetscape and views to heritage items.</p> <p>Consider against the provisions of CL5.10 of PLEP.</p> <p>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</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 would be included as a condition of consent were the application recommended for approval.

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. 1325651S_03 dated 24 August 2022).

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

Commitment	Required Target	Proposed
------------	-----------------	----------

Water	40	41
Thermal Comfort	Pass	Pass
Energy	50	50

Were the application recommended for approval, a condition would be included requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which would be included were the application recommended for approval.

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

2.8 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's Coastal and Riparian Lands referral sections raised no concerns in relation to the impacts of the proposal in the littoral rainforest area, subject to the conditions of consent that would be applied were the application recommended for approval.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

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

Comment:

The proposed development would not cause adverse impacts in relation to foreshore access or overshadowing, wind funnelling or loss of views from public places to the foreshore. The bulk, scale and proportions of the proposed dwelling are such that the proposal would result in adverse impacts on the visual amenity and scenic qualities of the coast and the cultural amenity of the locality. Council is not satisfied that the proposed development is designed, sited and will be managed to avoid adverse impacts referred to in (1)(a) or that those impacts can be minimised or mitigated.

Division 5 General

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

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

Comment:

The proposal is unlikely to cause increased risk of coastal hazards on the site or surrounding land.

As such, it is considered that the application **does not comply** with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

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?	No
zone objectives of the LEP?	No

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	8.0m	11.6m	45%	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	No
5.10 Heritage conservation	No
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	No
7.6 Biodiversity protection	No
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone C4 Environmental Living

The underlying objectives of the C4 Environmental Living zone are:

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

Comment:

The extent of the proposed excavation works and building footprint/siting do not constitute low-impact residential development and the potential impact to nearby trees would impact upon the ecological and scientific values of the area. As assessed against the desired future character provisions under A4.3, the proposal is found to cause adverse impacts upon views from surrounding land and the aesthetic values of the Bilgola Beach Area and broader Bilgola locality.

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

Comment:

As discussed above, the proposed development would have an adverse impact on the ecological, scientific and aesthetic values of the area.

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

Comment:

As assessed against the desired future character provisions under A4.3, the proposal is not considered to be low density and scale or integrate appropriately with the landform and landscape.

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

Comment:

Due to the potential impacts to nearby trees, it cannot be said that the development retains and enhances riparian and foreshore vegetation and wildlife corridors.

Conclusion:

For the reasons detailed above, the proposal is assessed as **inconsistent** with the objectives of the C4 Environmental Living zone.

4.6 Exceptions to development standards

Description of Non-compliance

Development standard:	Height of Buildings
Requirement:	8.0m
Proposed:	11.6m
Percentage variation to requirement:	45%

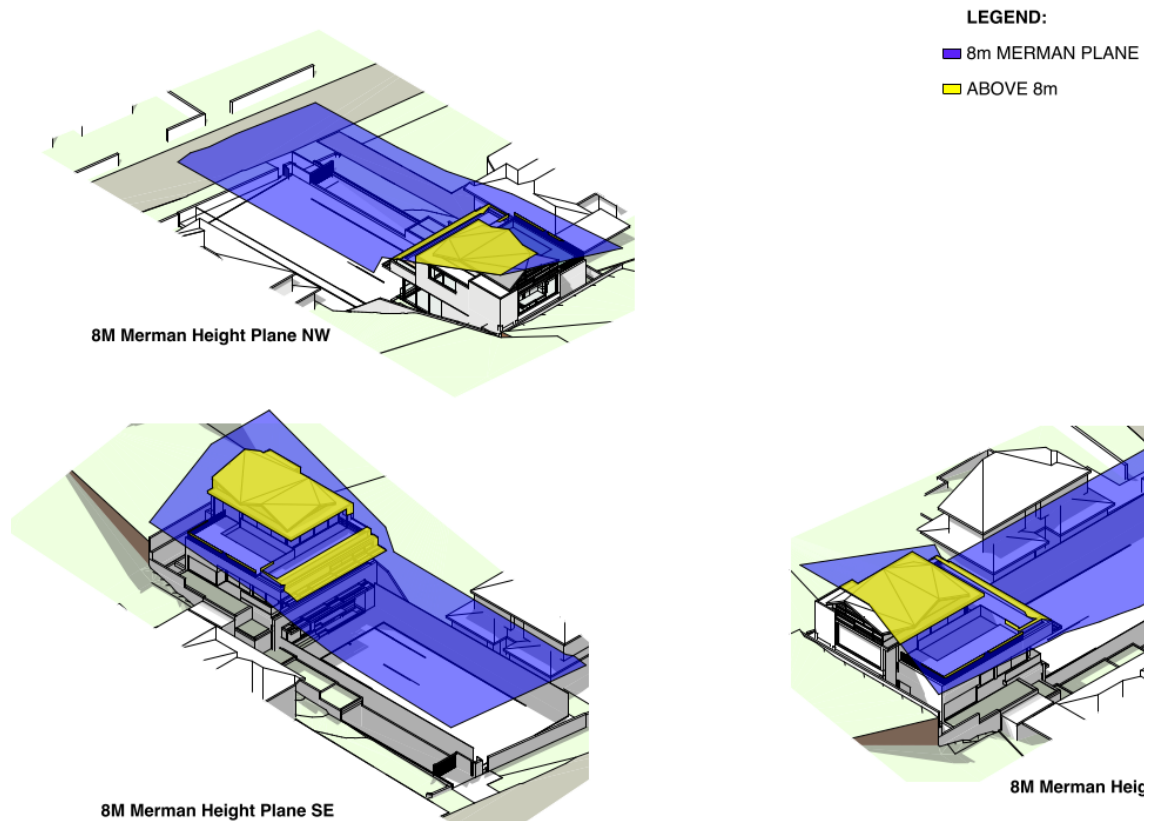


Figure 1. Applicant's illustration of the proposed building height breach as measured from the existing ground levels

The above height plane diagrams are 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 sectional drawing. On that basis, the diagrams are included for illustrative purposes. Figure 2 included below indicates Council's calculation of the proposed building height breach.

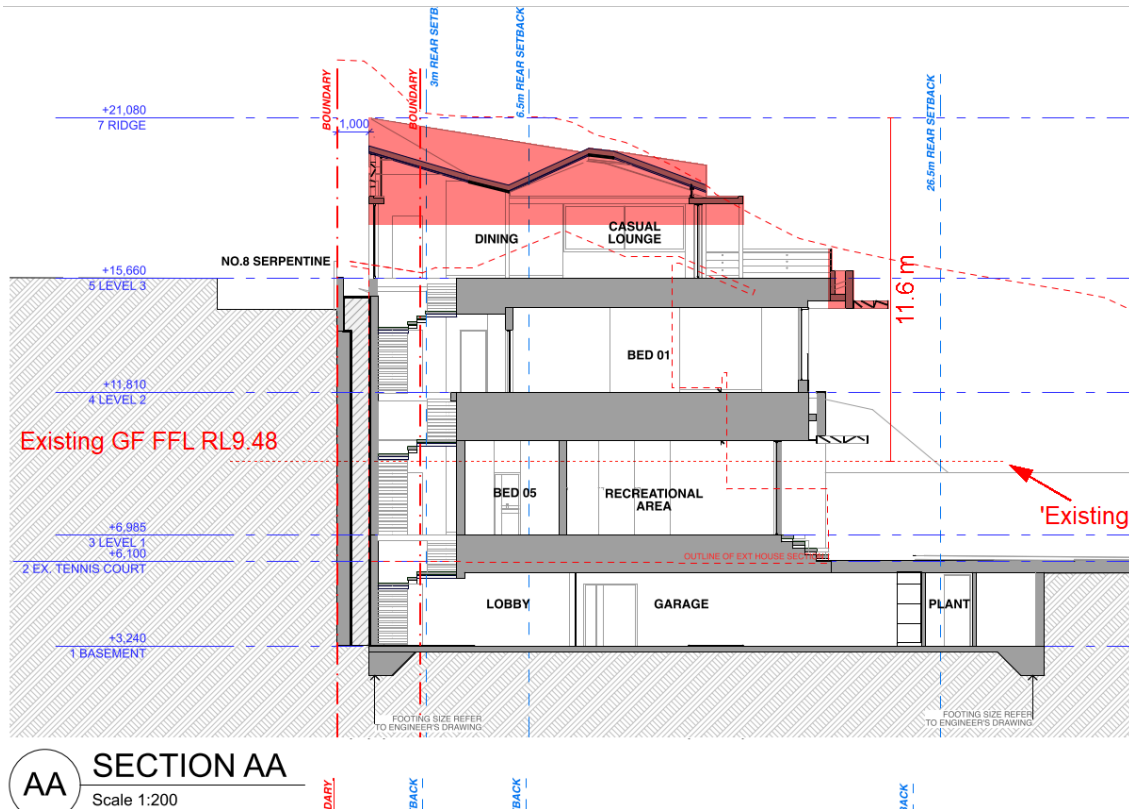


Figure 2. Section AA excerpt with building height variation shaded red

Assessment of Request to vary a Development Standard

The following assessment of the variation 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 **not demonstrated** that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

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

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

Comment:

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

- **"Ground 1 – Steep and artificially modified topography of the land**

Sufficient environmental planning grounds exist to justify the height of buildings variation including the steep and artificially modified topography of the land which makes strict compliance difficult to achieve distributing height and floor space in a contextually appropriate manner on this particular site.

In this regard, I note that the prior excavation of the site within the footprint of the existing building distorts the height of buildings development standard plane overlaid above the site when compared to the natural undisturbed topography of the land. When the original undisturbed levels of the site are interpolated across the building footprint the proposed development would generally comply with the 8 metre height standard as depicted in Figure 5"

The Applicant's Figure 5 referenced in the Clause 4.6 written request is included below. It is noted that the height blanket overlain on the below 3D model is based on *assumed* natural ground levels. Given the irregularity of the topography of the site and surrounds and the extent of the apparent prior alteration of the land, the accuracy of these assumed natural levels cannot be verified or relied upon with certainty.

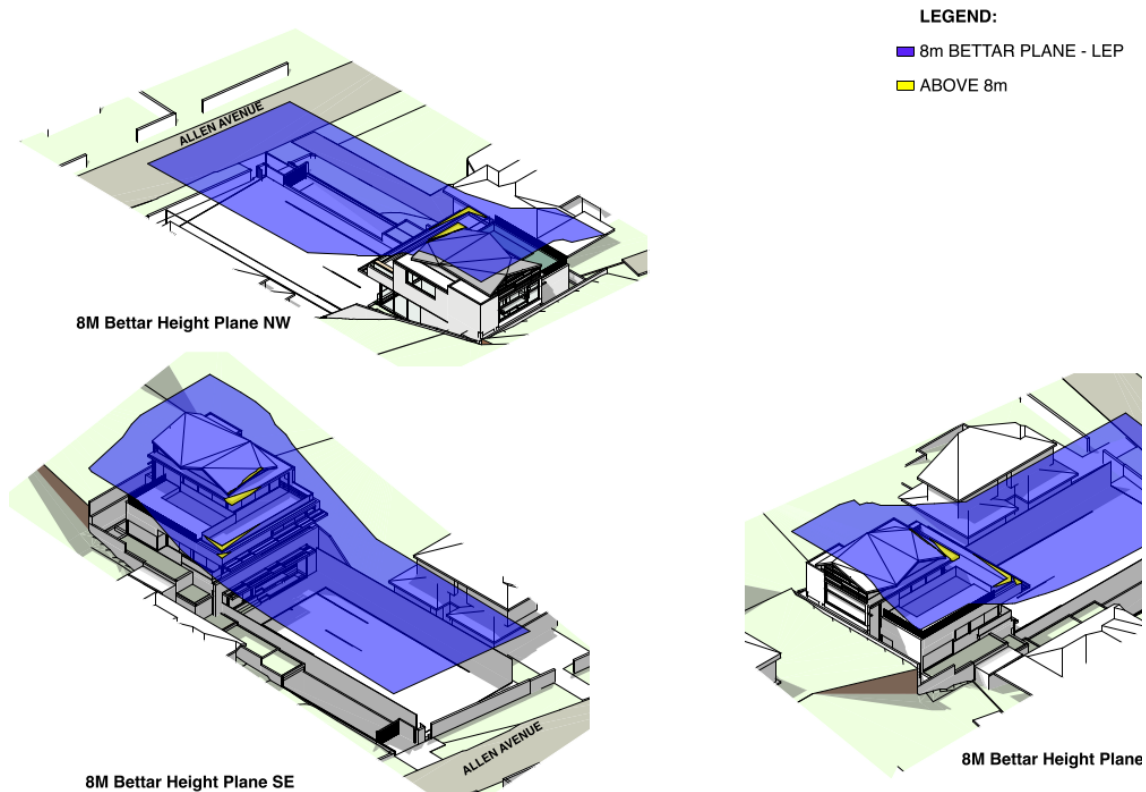


Figure 3 (Clause 4.6 Figure 5). Applicant's illustration of the proposed building height breach as measured from the assumed natural ground levels

Comment:

The presence of significant retaining walls at the northern, southern and western boundaries adjacent to the existing dwelling indicates the occurrence of substantial prior excavation of the site. Notwithstanding, the existing/proposed building footprint is generally flat as a result of this excavation and the proposal includes additional excavation depth to accommodate the lower levels of the proposed dwelling. As such, the prior alteration of the topography is not considered to present any material constraint to the provision of a compliant development.

Rather than the previous excavation of the site, the primary factors contributing to the building height variation are considered to be the desired three-storey built form (accommodating 499m² of GFA), the excessive floor slab depths totaling a thickness of 3.9m and the 2.9m roof height above the upper level ceiling. It is considered that the height variation arises out of poor design or certainly not skillful design, does not seek to respond appropriately to the applicable height control and could be reduced significantly without unreasonably diminishing the amenity or development potential of the site.

Therefore, the applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council **is not** satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the 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 height and scale of the dwelling are such that the proposal is incompatible with the desired character of the locality, as evidenced by the numerous and significant built form non-compliances. The proposed building height is excessive and unnecessary and the siting of the dwelling affords inadequate setbacks and landscaping to meaningfully mitigate the its visual bulk.

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

Comment:

The proposal is incompatible in height and bulk with surrounding and nearby development, which generally consists of two-storey dwellings within landscaped settings.

c) to minimise any overshadowing of neighbouring properties,

Comment:

Given the proposed building height, setback and building envelope breaches, it cannot be said that the proposal minimises overshadowing of neighbouring properties.

d) to allow for the reasonable sharing of views,

Comment:

The proposed building height breach is considered to be the primary factor contributing to the

proposal's view loss impacts. Given the availability of alternate designs that would enable a significant reduction in height and associated view impacts, the proposal does not allow for the reasonable sharing of views.

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

Comment:

In addition to the proposed building height variation, the development is considered to include excessive excavation of the site. As such, the proposal does not respond sensitively to the topography.

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

Comment:

The proposal is considered to cause an unacceptable level of visual impact on the scenic quality and heritage value of the locality by way of the dwellings height, proportions, siting and inadequate landscaping.

For the reasons detailed above, the proposal is considered to be **inconsistent** with the objectives of Clause 4.3 – 'Height of buildings'.

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.*
- *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.*

Comment:

As assessed earlier in this report, the proposed development is found to be **inconsistent** with the objectives of the zone and the proposed building height variation contributes to this inconsistency.

Conclusion:

For the reasons detailed above, the proposal is considered to be inconsistent 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 Director-General 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 inconsistency of the variation with the objectives of the development standard and C4 zone, the concurrence of the Director-General for the variation to the development standard **cannot be assumed**.

5.10 Heritage conservation

As detailed earlier in this report, Council's Heritage Section is unsupportive of the proposal due to the impacts of the development on the streetscape, impacts on views to the heritage-listed street trees and rock pool from surrounding properties and the potential damage to street trees as a result of the works.

Based on the concerns raised and the lack of arboicultural assessment, the proposal is found to be inconsistent with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is **not supported**, in this particular circumstance.

7.1 Acid sulfate soils

The submitted geotechnical report advises that no signs of potential or actual acid sulfate soils were identified and that the likelihood of intersecting acid sulfate soils on the site or impacting the water table is very low.

7.6 Biodiversity protection

In the absence of an arboricultural assessment, Council's Biodiversity Officer is unsupportive of the proposal due to the uncertainty regarding impacts to trees on neighbouring properties and the adjoining road reserve.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	Basement: 22.0m Dwelling: 28.0m	N/A	Yes
Rear building line	6.5m	Nil - 3.0m	100%	No
Side building line	N: 1.0m	Excavation: 0m	100%	No
		Dwelling: 1.0m	N/A	Yes
	S: 2.5m	Basement/excavation: 0m	100%	No
		Dwelling L1: 1.0m	60%	No
Building envelope	N: 3.5m	Dwelling L2, L3: 2.5m	N/A	Yes
		Two breaches: - Length 12.5m, up to 2.2m - Length 2.4m, up to 0.6m	48.9%	No
	S: 3.5m	One breach: - 13.3m, up to 2.2m	36.7%	No
Landscaped area	60% 510.2m ²	3.5% 29.6m ²	94.2%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	No	No
A4.3 Bilgola Locality	No	No
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites	No	No
B1.3 Heritage Conservation - General	No	No
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.6 Wildlife Corridors	No	No
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	No	No
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	No	No
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	No	No
C1.4 Solar Access	No	No
C1.5 Visual Privacy	No	No
C1.6 Acoustic Privacy	No	No
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D3.1 Character as viewed from a public place	No	No
D3.3 Building colours and materials	Yes	Yes
D3.6 Front building line	Yes	Yes
D3.7 Side and rear building line	No	No
D3.9 Building envelope	No	No
D3.11 Landscaped Area - Environmentally Sensitive Land	No	No

Clause	Compliance with Requirements	Consistency Aims/Objectives
D3.13 Fences - Flora and Fauna Conservation Areas	No	No
D3.15 Scenic Protection Category One Areas	No	No

Detailed Assessment

A4.3 Bilgola Locality

The Desired Future Character (DFC) of the locality is detailed within Clause A4.3 Bilgola Locality as follows:

The Bilgola 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. Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport.

The Bilgola Beach Area:

*Is a visual catchment that is environmentally significant and extremely susceptible to degradation. Its unique local and regional significance requires protection and preservation, and further investigation for listing as an environmental protection and/or conservation area. **Strict development controls will apply to this area (including a reduced building height limit to 8m) to ensure that its unique qualities are preserved through development that is sensitive to the area's characteristics.** A Visual Protection Area (as identified in Bilgola Locality Map 3) contains particular controls to minimise the impact of development that is visible from public places. The beach, valley and headlands represent a quiet uncrowded environment with no formal commercial activity. Its unique natural, unspoilt, non-commercial character makes it attractive to local residents and visitors alike and reflects the relaxed beach lifestyle. The local topography and natural features, notably the beachfront, headlands and stands of cabbage tree palms in the valley demand different sets of constraints on building design.*

(Note: **Bold** emphasis added to the most relevant sections)

Comment:

The proposed dwelling is not a low-density development of two storeys, is not within a landscaped setting and is not integrated with the landform and landscape. The proposal exceeds the reduced 8m building height control applicable to the locality and would not preserve the character or visual quality of the surrounding built and natural environments.

The proposal is not considered to represent a site-responsive design and involves significant variations to the building height standard and DCP built form and landscaped area controls, which will result in unreasonable visual, amenity and natural environment impacts.

Accordingly, the proposal is assessed as being **inconsistent** with the DFC of the Bilgola locality.

B1.4 Aboriginal Heritage Significance

The site is not in proximity to any known Aboriginal sites or identified as having a high potential of containing Aboriginal sites. Furthermore, the site does not contain any remnant natural rock outcrops and has been largely disturbed by previous development.

B3.1 Landslip Hazard

The site is mapped as Landslip Hazard area H1. The submitted geotechnical assessment finds that the proposal could be completed with negligible impact to surrounding properties/structures, subject to the implementation of the included recommendations. Were the application recommended for approval, the recommendations of the geotechnical report would be incorporated into the conditions of consent.

B4.6 Wildlife Corridors

Council's Biodiversity section is unsupportive of the proposal.

B8.1 Construction and Demolition - Excavation and Landfill

The listed Outcomes of *Clause B8.1 Construction and Demolition - Excavation and Landfill* are as follows:

- *Site disturbance is minimised.*
- *Excavation, landfill and construction not to have an adverse impact.*
- *Excavation and landfill operations not to cause damage on the development or adjoining property.*

Comment:

This proposal seeks to excavate to depths of up to 7.0m (as per Geotechnical Report) across the entirety of the proposed building footprint.

The proposed excavation volume is considered to be excessive and does not minimise disturbance of the site.

As such, the proposal is found to be **inconsistent** with the Outcomes of the control.

B8.3 Construction and Demolition - Waste Minimisation

A Waste Management Plan has been prepared and submitted with respect to the proposed development. Were the application recommended for approval, conditions would be included to ensure that the development be carried out in accordance with the waste management plans and the requirements of the DCP.

B8.6 Construction and Demolition - Traffic Management Plan

Access to the site is constrained by the narrow carriageway of Allen Avenue and limited on-street parking, and by the location of existing street trees and the limited width of the existing internal driveway. Were the application recommended for approval, a condition would be included requiring the preparation and compliance with a Construction Traffic Management Plan.

C1.1 Landscaping

Description of Non-Compliance

The proposed landscaped area and landscape design are insufficient to accommodate planting to satisfy the requirements of the control.

Merit Assessment

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

- *A built form softened and complemented by landscaping.*
- *Landscaping reflects the scale and form of development.*
- *Retention of canopy trees by encouraging the use of pier and beam footings.*
- *Development results in retention of existing native vegetation.*
- *Landscaping results in the long-term retention of Pittwater's locally native tree canopy.*
- *Landscaping retains and enhances Pittwater's biodiversity by using locally native plant species.*
- *Landscaping enhances habitat and amenity value.*
- *Landscaping results in reduced risk of landslip.*
- *Landscaping results in low watering requirement.*

Comment:

The combined footprint of the proposed dwelling and existing tennis court prevent the inclusion of adequate deep soil area/volume to accommodate substantial planting. The proposed landscaping does not soften and complement the built form, reflect the scale of the development or enhance habitat and amenity value. Insufficient information is provided in relation to the retention of existing vegetation on the site and surrounding properties.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of the control.

Accordingly, this assessment finds that the proposal is **not supported**, in this particular circumstance.

C1.3 View Sharing

Height Poles

Note: Height poles were erected on the site at the request of Council in the positions indicated in the below surveyor's certification (Figure 4). The Applicant advised that it was not feasible to affix poles 3, 4 or 6 (Figure 5) atop the existing roof, and that an additional pole was instead constructed at the at the south-eastern corner of the Level 3 roof to illustrate the extent of the Level 3 wall/roof. It was also advised that due to the limitations of the existing roof, the constructed/surveyed pole heights are up to 30mm lower and 100mm higher than the proposed roof, and the locations vary by up to 860mm from their intended positions. Despite these variances, the constructed poles are considered adequate for assessment purposes.

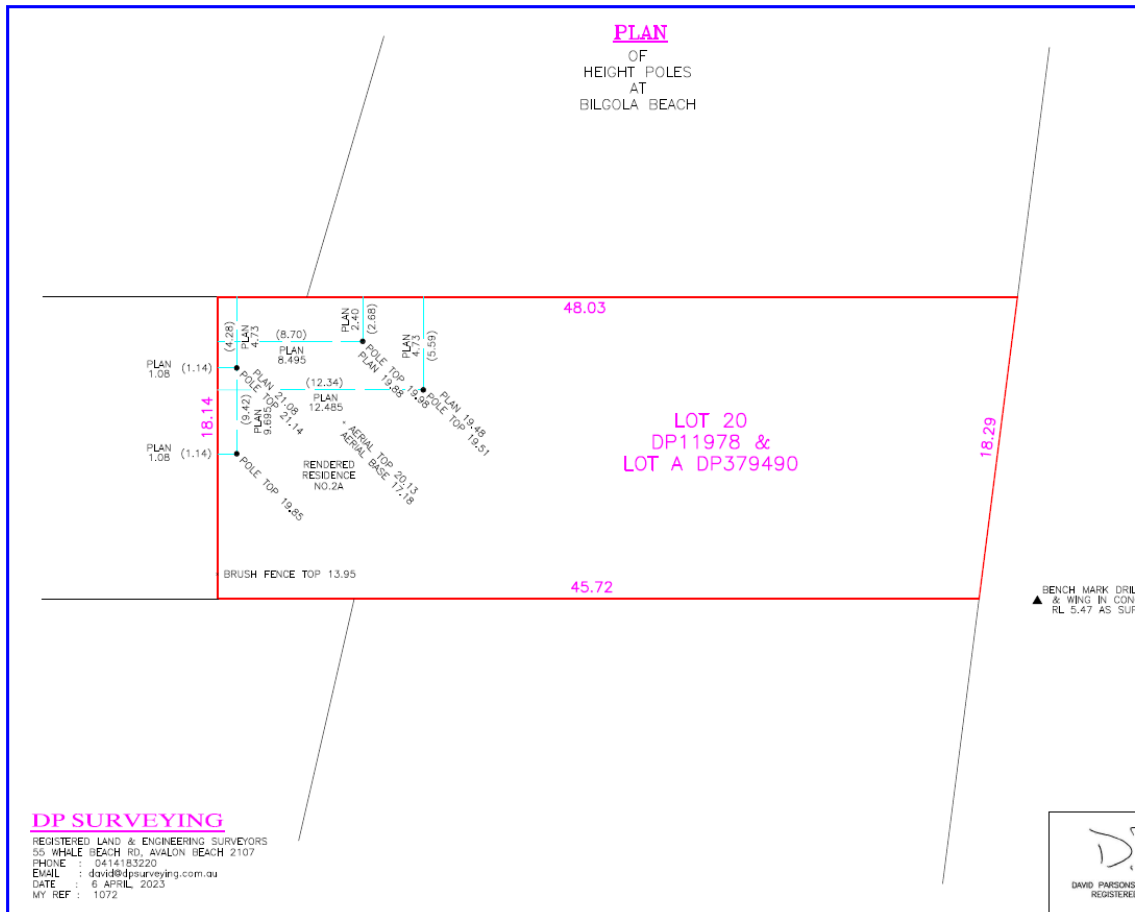


Figure 4. Surveyor's certification of constructed height poles

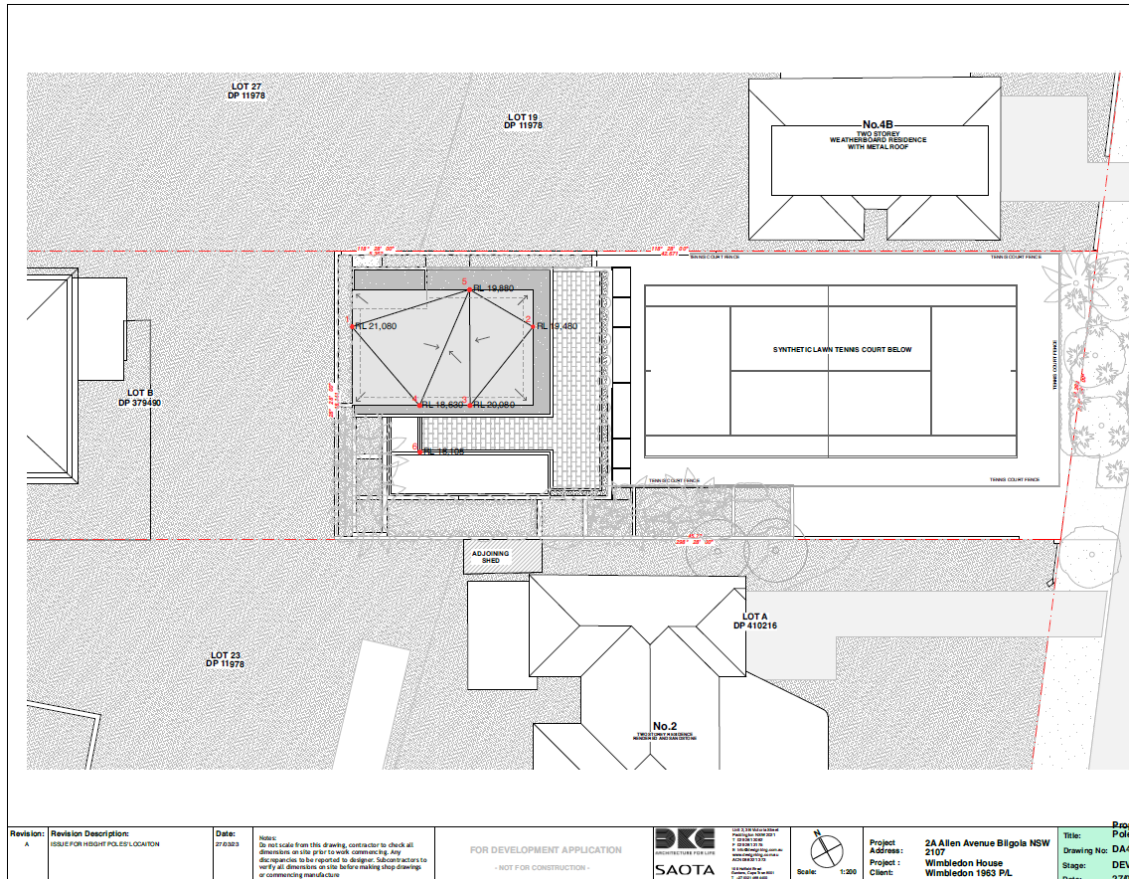


Figure 5. Height pole location plan

Merit consideration

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

- A reasonable sharing of views amongst dwellings.

Comment:

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

1. Nature of the views affected

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

Comment to Principle 1:

The available views from 8 and 10 The Serpentine comprise ocean views of Bilgola Beach and heritage-listed street trees in Allen Avenue. The views include land-water interface at the southern end of Bilgola Beach; the land-water interface further to the north interrupted by existing developments and vegetation.



Photo 1. View loss impact from No. 8 rear deck (north)



Photo 2. View loss impact from No. 8 rear deck (centre)



Photo 3. View loss impact from No. 8 dining room



Photo 4. View loss impact and retained south-easterly views from No. 8 rear deck (south)



Photo 5. View loss impact from No. 10 lower terrace



Photo 6. Retained easterly views from No. 10 upper deck

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

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

Comment to Principle 2:

The views are available from living areas and adjoining rear decks. The views are obtained across the rear boundary of No. 8 and the side and rear boundaries of No. 10 and are available from sitting and standing positions.

3. Extent of impact

“The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more

significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating”.

Comment to Principle 3:

8 The Serpentine

The northern portion of the available views from the living room and the northern side of the rear deck will be significantly impacted, with the roof ridge extending above the horizon. The affected views comprise water views and surf zone, with minimal land-water interface. Views of the heritage-listed street trees will also be impacted. The views from the southern side of the rear deck are affected to a lesser extent and the views to the southern part of Bilgola Beach, including the primary land-water interface, are unaffected.

Considering the extent and value of the views affected versus those retained, the extent of impact is assessed as **moderate**.

10 The Serpentine

The southern portion of the available views from the lower level living room and rear deck will be significantly impacted, with the roof ridge extending above the horizon. The affected views comprise water views, land-water interface, the heritage-listed Ocean Rock Pool and part of South Bilgola Headland. Views of the heritage-listed street trees will also be impacted. The views directly to the east (northward of the subject site) and the views from the upper level are unaffected.

Considering the extent and value of the views affected versus those retained, the extent of impact is assessed as **moderate**.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

The proposed dwelling breaches the 8.0m building height control by up to 3.6m and does not comply with the side boundary envelope, side setback and rear setback controls prescribed by the DCP.

The side setback breaches occur at the basement level and level 1 and are not relevant to view loss. Similarly, the southern side building envelope breach relates to the Level 2 wall and Level 3 terrace/pool, neither of which are expected to cause material view impacts.

The rear setback breach does not directly result in view loss, however the siting of the dwelling

towards the rear of the site and within the rear setback where the existing ground level is higher does contribute to the overall height and view impact of the development. In this regard, it is noted that a dwelling with a compliant rear setback would be positioned to a greater extent on the flatter part of the site and would likely necessitate an overall height more comparable with the adjacent dwellings to at 2 and 4B Allen Avenue, to the north and south.

The proposed building height and northern side building envelope non-compliances are primarily responsible for the view impacts of the development. As discussed earlier in this report, the 11.6m building height includes floor slab depths totaling 3.9m and a roof height of 2.9m above the level 3 ceiling. It is apparent that a more skillful design could provide the same development potential while significantly reducing the resulting view impacts. A reduction in the height of the dwelling could also allow a corresponding reduction in the northern side building envelope breach.

The proposal seeks to gain water views at the expense of the views of surrounding properties through an excessive and non-compliant building height. Based on the above assessment, the proposal is not considered to represent a reasonable sharing of views or an appropriate view loss outcome.

- *Views and vistas from roads and public places to water, headland, beach and/or bush views are to be protected, maintained and where possible, enhanced.*

Comment:

The proposal would not unreasonably impact views from the public domain.

- *Canopy trees take priority over views.*

Comment:

The proposal does not seek to remove any existing canopy trees.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of the control.

Accordingly, this assessment finds that the proposal is **not supported**, in this particular circumstance.

C1.4 Solar Access

Clause C1.4 Solar Access includes the following controls:

- *The main private open space of each dwelling and the main private open space of any adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st.*
- *Windows to the principal living area of the proposal, and windows to the principal living area of adjoining dwellings, are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st (that is, to at least 50% of the glazed area of those windows).*
- *Solar collectors for hot water or electricity shall receive at least 6 hours of sunshine between 8.00am and 4.00pm during mid winter.*
- *Developments should maximise sunshine to clothes drying areas of the proposed development or adjoining dwellings.*

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

Comment:

The submitted shadow diagrams do not include sufficient detail to demonstrate that a compliant level of sunlight access is maintained to the adjoining properties in accordance with PDGP C1.4. Specifically, the shadow diagrams are provided at 3-hour intervals only and do not include any detail in relation to the windows or solar collectors of adjoining dwellings.

Given the lack of information provided in relation to overshadowing, a proper assessment of compliance with the control cannot be undertaken.

Accordingly, the proposal is **not supported** in this particular circumstance.

C1.5 Visual Privacy

Description of Non-Compliance

Controls

- *Private open space areas including swimming pools and living rooms of proposed and any existing adjoining dwellings are to be protected from direct overlooking within 9 metres by building layout, landscaping, screening devices or greater spatial separation as shown in the diagram below (measured from a height of 1.7 metres above floor level).*
- *Elevated decks and pools, verandahs and balconies should incorporate privacy screens where necessary and should be located at the front or rear of the building.*

Comment:

The proposed siting and design of the dwelling results in windows and private open spaces either in close proximity or alignment with the dwellings and private open spaces of adjoining properties to the north, south and west. The substantial elevation of the dwelling above adjoining properties exacerbates privacy impacts, particularly those associated with the level 3 terrace and swimming pool areas.

Merit Assessment

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

- *Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design.*
- *A sense of territory and safety is provided for residents.*

Comment:

The proposed development fails to optimise privacy through good design or provide a sense of

territory and safety for residents of adjoining properties.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of the control.

Accordingly, this assessment finds that the proposal is **not supported**, in this particular circumstance.

C1.6 Acoustic Privacy

Description of Non-Compliance

While it is acknowledged that swimming pools are a common feature of residential development, the elevation of the proposed pool and its location within the side setback, rather than to the front or rear of the dwelling, are considered likely to generate periods of unreasonable noise disturbance when in use.

Merit Assessment

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

- *Noise is substantially contained within each dwelling and noise from any communal or private open space areas are limited.*
- *Noise is not to be offensive as defined by the Protection of the Environment Operations Act 1997, including noise from plant, equipment and communal or private open space areas.*

Comment:

By virtue of the proposed pool siting and elevation, the proposal is not considered to limit noise levels from private open space areas.

Were the application recommended for approval, a condition would be imposed to ensure that any noise generated by mechanical plant equipment not exceed 5dBA above the background noise levels at adjoining properties.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of the control.

Accordingly, this assessment finds that the proposal is **not supported**, in this particular circumstance.

C1.25 Plant, Equipment Boxes and Lift Over-Run

Were the application recommended for approval, a condition would be included requiring that the ongoing operation of all mechanical plant equipment comply with this control.

D3.1 Character as viewed from a public place

Description of Non-Compliance

As demonstrated by the proposal's numerous and significant variations to the applicable built form controls, the proposal is considered to be non-compliant with the following provisions of this control:

- *The bulk and scale of buildings must be minimised; and*
- *Landscaping is to be integrated with the building design to screen the visual impact of the built form. In residential areas, buildings are to give the appearance of being secondary to landscaping and vegetation.*

Merit Assessment

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

- *To achieve the desired future character of the Locality.*
- *To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing built and natural environment.*
- *To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.*
- *The visual impact of the built form is secondary to landscaping and vegetation, or in commercial areas and the like, is softened by landscaping and vegetation.*
- *High quality buildings designed and built for the natural context and any natural hazards.*
- *Buildings do not dominate the streetscape and are at 'human scale'. Within residential areas, buildings give the appearance of being two-storey maximum.*
- *To preserve and enhance district and local views which reinforce and protect the Pittwater's natural context.*
- *To enhance the bushland vista of Pittwater as the predominant feature of the landscape with built form, including parking structures, being a secondary component.*
- *To ensure that development adjacent to public domain elements such as waterways, streets, parks, bushland reserves and other public open spaces, compliments the landscape character, public use and enjoyment of that land.*

Comment:

As detailed earlier in this report, the proposed development does not achieve the DFC of the Bilgola Locality, enhance the existing streetscape or maintain a 'human scale' and two-storey appearance. The proposal does not respond to the spatial characteristics, context or hazards of the site, incorporate adequate landscaping to minimise visual impact or preserve and enhance views and bushland vistas to protect Pittwater's natural context.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of the control.

Accordingly, this assessment finds that the proposal is **not supported**, in this particular circumstance.

D3.3 Building colours and materials

The proposal generally incorporates appropriate colours and materials. Were the application recommended for approval, a condition would be included to ensure compliance with this control.

D3.7 Side and rear building line

Description of Non-Compliance

Clause D3.7 Side and rear building line prescribe minimum side setbacks of 1.0m to one side and 2.5m to the other side and a minimum rear setback of 6.5m.

The proposal includes the following non-compliant setbacks:

- Nil northern side setback to the basement;
- Nil southern side setback to the basement; and
- 1m southern side setback to level 1.

Merit Assessment

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

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

Comment:

The proposal is found to be inconsistent with the DFC of the Bilgola Locality, as assessed under A4.3.

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

Comment:

As demonstrated by the setback, building envelope and building height breaches, it cannot be said that the bulk and scale of the built form has been minimised.

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

Comment:

The proposed setback breaches do not directly contribute to the view loss impacts of the development. However, the proposal is not supported due to view impacts caused by various other non-compliances. A detailed assessment of view loss is completed against C1.3.

- *To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.*

Comment:

The proposal does not promote view sharing in accordance with this outcome.

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

Comment:

The proposed side and rear setback non-compliances contribute to the unreasonable privacy, amenity and solar access impacts of the development.

- *Substantial landscaping, a mature tree canopy and an attractive streetscape.*

Comment:

The proposed setbacks do not enable the provision of adequate landscaped areas to accommodate landscaping and tree planting.

- *Flexibility in the siting of buildings and access.*

Comment:

Given the resulting visual and amenity impacts to surrounding properties, the degree of flexibility sought in relation to siting of the dwelling is not acceptable in this case.

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

Comment:

No significant vegetation is proposed for removal. However, the proposed landscaping is insufficient to visually reduce the bulk and scale of the built form.

- *To ensure a landscaped buffer between commercial and residential zones is established.*

Comment:

N/A - the site is not in proximity to any commercial zone.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of the control.

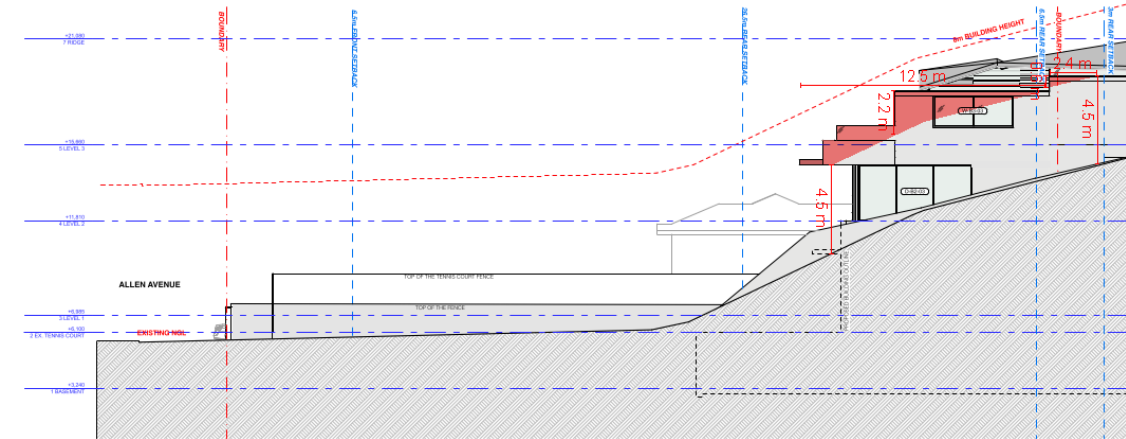
Accordingly, this assessment finds that the proposal is **not supported**, in this particular circumstance.

D3.9 Building envelope

Description of Non-Compliance

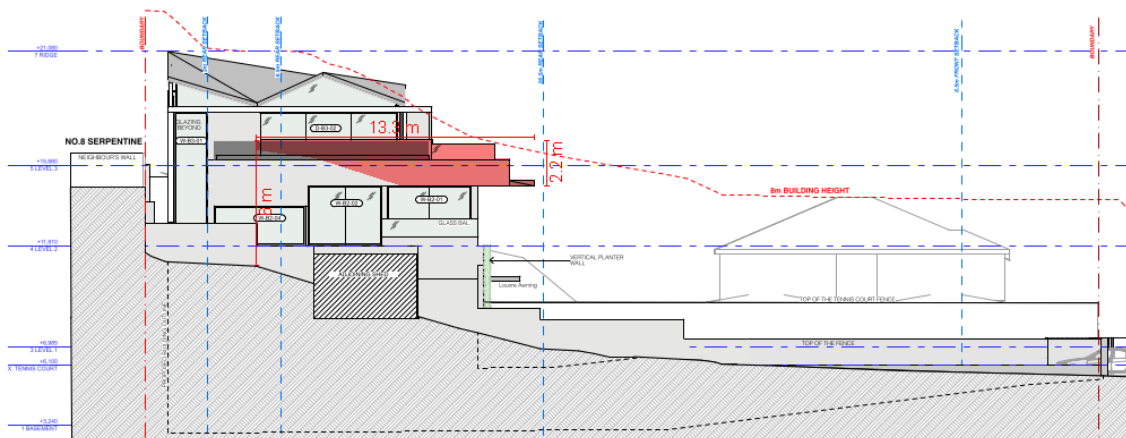
The control requires that structures are contained within a 3.5m high envelope measured at the side boundaries before turning inwards at 45 degrees.

The proposed breaches of the building envelope control at the northern and southern elevations are indicated shaded red on the below Figures 6 and 7.



01 NORTH ELEVATION
Scale 1:200

Figure 6. Northern elevation plan indicating building envelope breaches shaded red



02 SOUTH ELEVATION
Scale 1:200

Figure 7. Southern elevation plan indicating building envelope breaches shaded red

Merit Assessment

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

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

Comment:

The proposal is found to be inconsistent with the DFC of the Bilgola Locality, as assessed under A4.3.

- *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 proposed development would not enhance the existing streetscape or result in a scale and density that is below the height of the tree canopy.

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

Comment:

Spatial characteristics are taken to refer to topography and vegetation. The extent of envelope encroachments and building height breach are not reflective of a design that responds to the topography of the site. The extent of excavation, which is not evident on the above drawing, is also not reflective of a design that responds to the topography of the site.

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

Comment:

As demonstrated by the setback, building envelope and building height breaches, it cannot be said that the bulk and scale of the built form has been minimised.

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

Comment:

The proposed building height variation and associated envelope breaches result in unreasonable view impacts upon surrounding properties.

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

Comment:

The proposed building envelope non-compliances contribute to the unreasonable privacy, amenity and solar access impacts of the development.

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

Comment:

No significant vegetation is proposed for removal. However, the proposed landscaping is insufficient to visually reduce the bulk and scale of the built form.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of the control.

Accordingly, this assessment finds that the proposal is **not supported**, in this particular circumstance.

D3.11 Landscaped Area - Environmentally Sensitive Land

Description of Non-Compliance

The control requires that 60% of the site area accommodate landscaping. The control permits the following areas to be included in the calculation provided that the proposal achieves the relevant outcomes:

- i) *impervious areas less than 1 metre in width (e.g. pathways and the like);*
- ii) *for single dwellings on land zoned R2 Low Density Residential, R3 Medium Density Residential or E4 Environmental Living, up to 6% of the total site area may be provided as impervious landscape treatments providing these areas are for outdoor recreational purposes only (e.g. roofed or unroofed pergolas, paved private open space, patios, pathways and uncovered decks no higher than 1 metre above ground level (existing)).*

The PLEP defines landscaped area as "a part of a site used for growing plants, grasses and trees, but does not include any building, structure or hard paved area." From this definition, it is considered that a 'landscaped area' is at-grade, not located above any structure, not restricted in height (i.e., underneath a deck or building), and is capable of accommodating landscaping.

The proposed landscaped area in accordance with the above is calculated to be 29.6m² or 3.5% of the site area.

The calculated landscaped area does not include any of the proposed 'on-structure' planter boxes as these elements are not considered to meet the PLEP landscaped area definition. Further, as the proposal is assessed below as being inconsistent with the outcomes of the control, variations (i) and (ii) above cannot be applied.

For clarity, Council considers the below areas in green to constitute 'Landscaped Area':

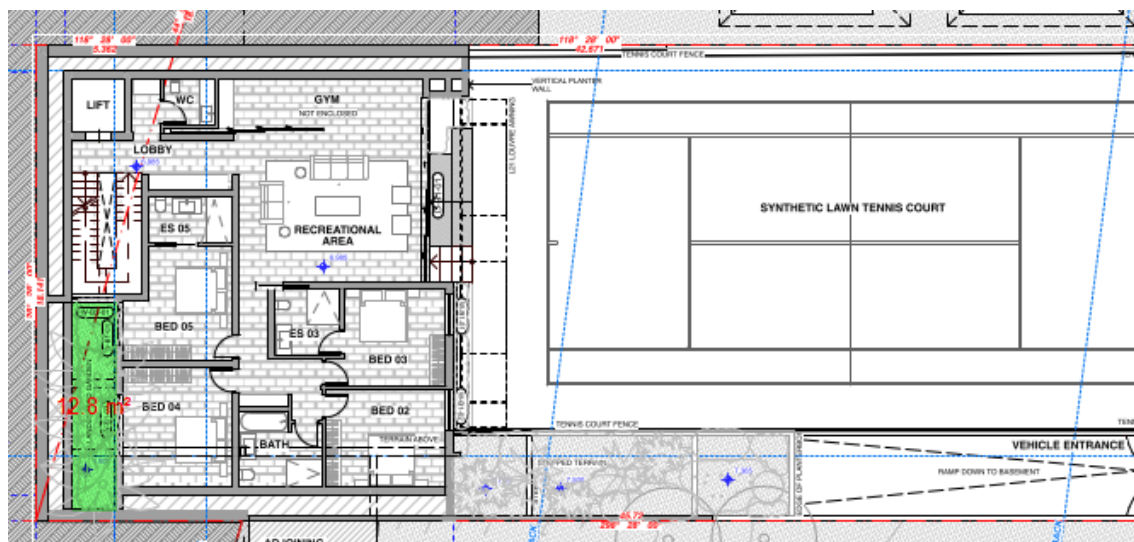


Figure 8. Site/floor plan indicating calculable landscaped areas shaded green

Merit Consideration

With regard to the consideration for a variation, the development is assessed against the underlying

Objectives of the Control as follows:

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

Comment:

The proposal is found to be inconsistent with the DFC of the Bilgola Locality, as assessed under A4.3.

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

Comment:

As demonstrated by the setback, building envelope and building height breaches, it cannot be said that the bulk and scale of the built form has been minimised.

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

Comment:

The proposed landscaped area is insufficient to address the unreasonable privacy, amenity and solar access impacts of the development.

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

Comment:

No significant vegetation is proposed for removal. However, the proposed landscaping is insufficient to visually reduce the bulk and scale of the built form.

- *Conservation of natural vegetation and biodiversity.*

Comment:

The proposal does not demonstrate that there will be no adverse impacts to natural vegetation and biodiversity on the site and surrounding land.

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

Comment:

The proposal does not maximise the availability of soft surfaces to minimise stormwater runoff.

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

Comment:

The proposal is found to have an unacceptable impact on the character of the area by virtue of the proportions of the proposed dwelling and the inadequacy of landscaped spaces around the

curtilage of the building to accommodate significant vegetation.

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

Comment:

Given the variation to the landscaped area control, it cannot be said that the soft surface of the site has been maximised.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of the control.

Accordingly, this assessment finds that the proposal is **not supported**, in this particular circumstance.

D3.13 Fences - Flora and Fauna Conservation Areas

Description of Non-compliance

The control prescribes that:

- *Front fences to a maximum height of 1.8 metres may be erected on the boundary for those properties that have frontage to Bilgola Avenue, or Allen Avenue. These fences should be constructed of sandstone or like materials to conform to adjoining fences, and should provide extensive landscaping incorporated into the fence or in front of the fence.*

Comment:

The proposed fence complies with the maximum height allowance. However, the proposal relies on landscaping within the road reserve that is not supported by Council's Landscape section. Limited detail is provided as to the proposed fencing materials and finishes.

Merit Assessment

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

- *To achieve the desired future character of the Locality.*
- *To ensure fences compliment and conserve the visual character of the street and neighbourhood*
- *To define the boundaries and edges between public and private land and between areas of different function.*
- *To contribute positively to the public domain.*
- *An open streetscape that allows casual surveillance of the street.*
- *Fences, where provided, are suitably screened from view from a public place.*
- *Safe sight distances and clear view of the street (including to and from driveways) for motorists and pedestrians.*
- *To ensure heritage significance is protected and enhanced.*
- *To ensure an open view to and from the waterway is maintained.*

- *To maintain the natural open character of the headland and remnant bushland areas.*

Comment:

The proposed front fence design does not achieve the desired future character through the provision of appropriate landscaping, materials and articulation. The lack of arboricultural assessment does not enable an assessment of the potential impacts of the fence construction on the adjacent heritage-listed street trees.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of the control.

Accordingly, this assessment finds that the proposal is **not supported**, in this particular circumstance.

D3.15 Scenic Protection Category One Areas

The application does not provide sufficient information to demonstrate that impact to existing significant vegetation is minimised and does not include sufficient landscaped areas to enable planting of new native vegetation. Were the application recommended for approval, a condition would be included in relation to the colours and materials of external surfaces.

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 \$27,064 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,706,407.

CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

Council **is not** 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

The detailed assessment in this report finds that the proposal is an overdevelopment of the site and is inconsistent with the desired future character envisaged the applicable planning controls.

The proposal in the form presented is an inappropriate and unsuitable development for the site, which cannot be justified especially in relation to the excessive excavation, excessive floor slab thicknesses, inadequate setbacks and roof height. The desire and effort to retain the existing tennis court and replace the existing dwelling with a much larger building and gain more ocean views, has translated into a series of avoidable consequences for adjoining properties and the locality, and a more considered, modest and conservative approach should be taken to the redevelopment of the site, one which achieves a more "on-balance" approach, which properly factors in the self-imposed and man-made constraint of the tennis court and the need to ensure the height does not unduly impact on the amenity of adjoining properties.

The built form is excessive in bulk and scale above ground and includes excessive excavation below ground. The variations to both PLEP and P21 DCP controls, which are intended to limit the intensity and impact of development, demonstrate that the proposal is unsuitable for the site. The proposal does not respond appropriately to the topography or adjoining developments and will result in an unacceptable level of visual and amenity impacts to adjoining properties and the surrounding locality.

The proposed variation to the building height development standard contributes to the unreasonable visual and amenity impacts of the development and is not adequately justified in the Applicant's

Clause 4.6 written request.

In response to the notification of the application, Council received 21 submissions in objection to the development and one submission in support. The concerns raised in the objections are relevant, concurred with and form reasons for refusal of the application.

As mentioned earlier in this report, the application is the subject of a Class 1 Appeal in the Land and Environment Court and it is anticipated that the final reasons for refusal will assist in defending the appeal.

Accordingly, for the multiple reasons set out in this report, the Panel should not support the Clause 4.6 variation and **REFUSE** to grant consent to the application. It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council, as the consent authority REFUSE Development Consent to Development Application No DA2022/1494 for the Demolition works and construction of a dwelling house including swimming pool on land at Lot 20 DP 11978, 2 A Allen Avenue, BILGOLA BEACH, Lot A DP 379490, 2 A Allen Avenue, BILGOLA BEACH, for the reasons outlined as follows:

1. **1. Clause 4.6 Height of Buildings Variation**

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to Development Standards of the Pittwater Local Environmental Plan 2014.

Specifically, the proposal is inconsistent with the underlying objectives of PLEP 2014, Clause 4.3 Height of Buildings. Further, the applicant's written request under Clause 4.6 of PLEP 2014 has not adequately demonstrated that compliance with the standards is unreasonable or unnecessary, that there are sufficient environmental planning grounds to justify the contraventions or that the proposed development will be in the public interest.

2. **2. Aims of the Pittwater Local Environmental Plan 2014**

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Pittwater Local Environmental Plan 2014.

3. **3. Heritage**

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Clause 5.21 Heritage Conservation of the Pittwater Local Environmental Plan 2014.

Specifically, the application fails to demonstrate that the proposal will avoid adverse impacts upon the heritage-listed street trees in Allen Avenue or that the development would complement the streetscape and surrounding heritage items.

4. **4. Excavation and Groundworks**

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Clause 7.2 Earthworks of the Pittwater Local Environmental Plan 2014.

Specifically, the proposed volume and depth of excavation to accommodate the proposed building are excessive and do not respond to the topography of the site. The proposal is also contrary to the provisions of Pittwater 21 Development Control Plan Clause A3.4, Clause A4.3 and Clause B8.1.

5. **5. Biodiversity**

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Clause 7.6 Biodiversity Protection of the Pittwater Local Environmental Plan 2014.

Specifically, the application does not demonstrate that the proposal will not detrimentally impact existing trees on adjoining properties and Allen Avenue.

6. **Desired Future Character and C4 Environmental Living Zone**

Pursuant to Section 4.15(1)(a)(i) and (iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of the C4 Environmental Living Zone under PLEP 2014 and Clause A4.3 Bilgola Locality of the Pittwater 21 Development Control Plan.

Specifically, the proposal, due to its excessive bulk, its impact on the amenity of adjoining properties and users of the public domain, its poor relationship with the subject property and the environment is inconsistent with the objectives of the C4 Environmental Living Zone and with the Desired Future Character provisions of the Bilgola Locality.

7. **Landscaping**

Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Clause C1.1 Landscaping and Clause D3.11 Landscaped Area - Environmentally Sensitive Land of the Pittwater 21 Development Control Plan.

Specifically, the combined footprint of the proposed dwelling and existing tennis court prevent the inclusion of adequate deep soil area/volume for substantial planting to assist in mitigating the bulk and scale of the Proposal, maintaining the character of the locality and minimising impacts to adjoining properties.

8. **Amenity**

Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Clause C1.3 View Sharing, Clause C1.4 Solar Access, Clause C1.5 Visual Privacy and Clause C1.6 Acoustic Privacy of the Pittwater 21 Development Control Plan.

Specifically, the proposed building height, bulk, siting and design result in unacceptable impacts upon adjoining properties in relation to view loss, overshadowing and visual and acoustic privacy.

9. **Setbacks and Building Envelope**

Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Clause D3.7 Side and Rear Building Line and Clause 3.9 Building Envelope of the Pittwater 21 Development Control Plan.

Specifically, the proposal would result in adverse amenity impacts upon adjoining properties and diminish the character of the surrounding locality.

10. **Public Interest**

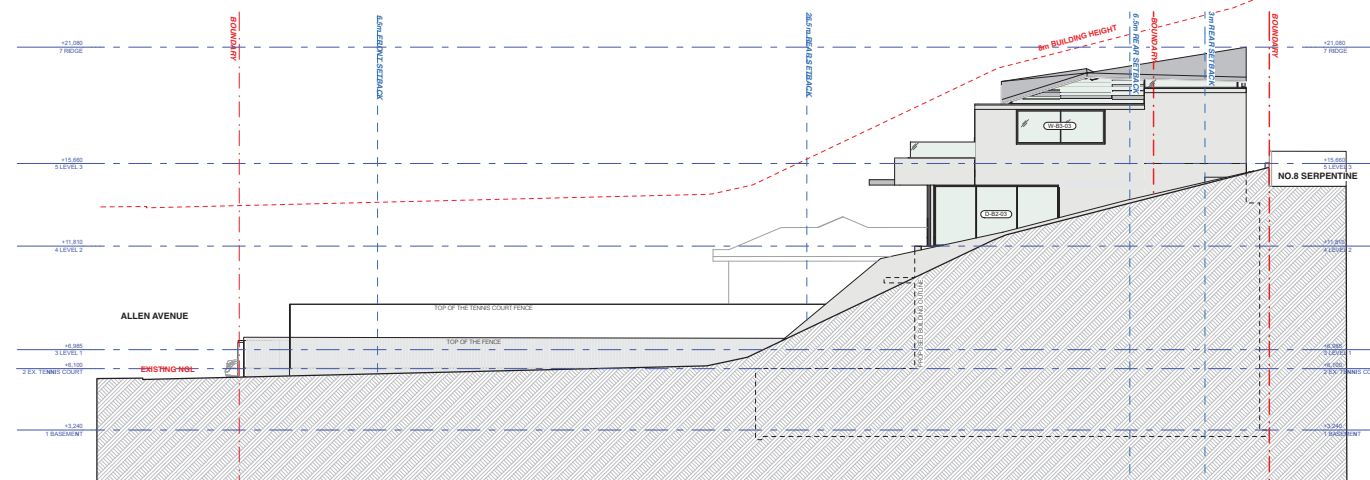
Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.

Specifically, the development is not in the public interest having regard to the matters set out in the submissions to the extent that the concerns raised are consistent with Council's assessment.

2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Pittwater

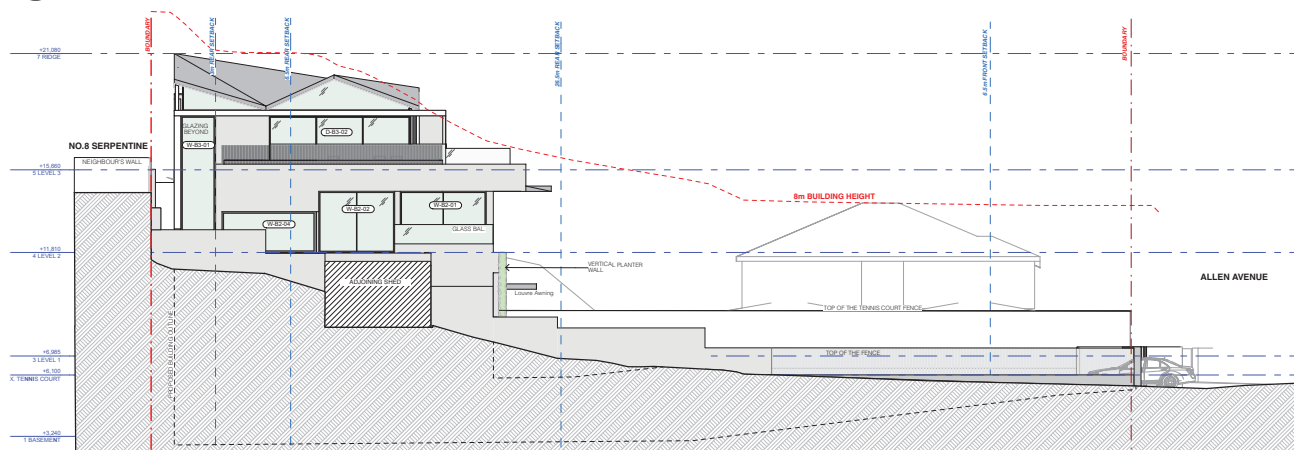
Local Environmental Plan 2014.





01 NORTH ELEVATION

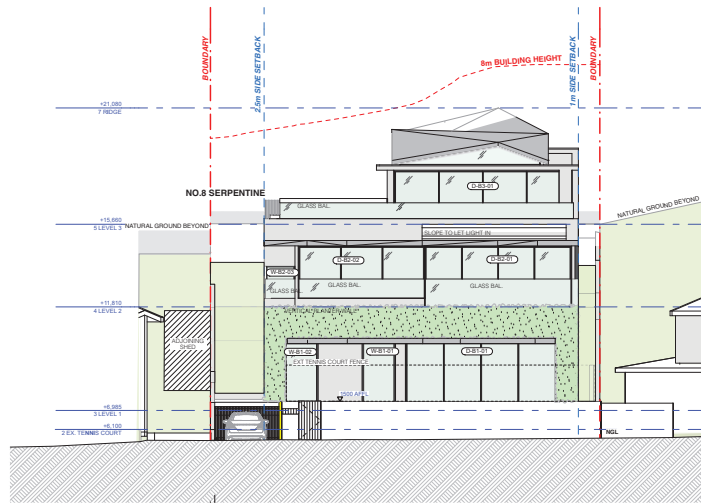
Scale 1:200



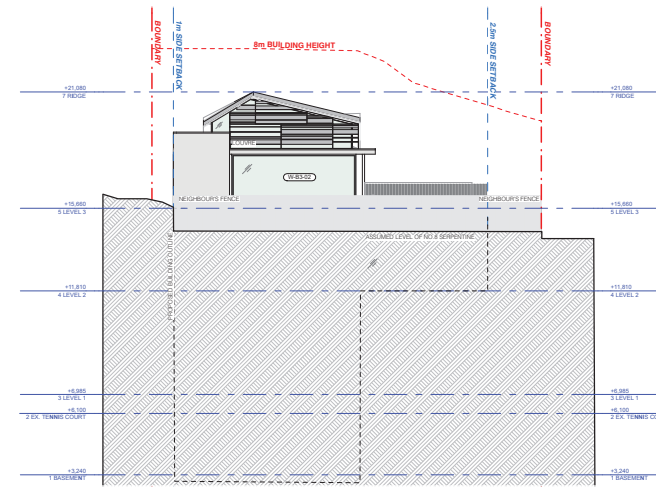
03 SOUTH ELEVATION

Scale 1:200

Revision: A	Revision Description: ISSUE FOR DEVELOPMENT APPLICATION	Date: 15/08/22	Notes: Noted on scale from this drawing, contractor to check all dimensions on site prior to work commencing. Any discrepancies to be reported to designer. Subcontractors to verify all dimensions on site before making shop drawings or commencing manufacture	FOR DEVELOPMENT APPLICATION	 	140-17-1 Victoria Street Paddington NSW 2021 T 02 9550 3502 F 02 9551 3175 E info@saota.com.au www.saota.com.au 100 Halford Street Gardens, Cape Town 8001 T +27 21 461 4840	Scale: 1:200	Project Address: 2A Allen Avenue Bilgola NSW 2107 Project Client: Wimbledon House Wimbledon 1963 P/L	Title: North & South Elevations Drawing No: DA2-00 Stage: DEVELOPMENT APPLICATION Date: 15/08/22	Revision: A
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01 EAST ELEVATION - STREET
Scale 1:200



02 WEST ELEVATION
Scale 1:200



Revision: A	Revision Description: ISSUE FOR DEVELOPMENT APPLICATION	Date: 15/08/22	Notes: Do not scale from this drawing, contractor to check all dimensions on site prior to work commencing. Any discrepancies to be reported to designer. Subcontractors to verify all dimensions on site before making shop drawings or commencing manufacture.	FOR DEVELOPMENT APPLICATION - NOT FOR CONSTRUCTION -	 <p>DKA ARCHITECTURE FOR LIFE 150 Westfield Street Gardenside, Sydney NSW 1585 T +61 (0)2 9551 3000 F +61 (0)2 9551 3002 www.dka-architects.com.au ACN 095 301 313</p>	Scale: 1:200	Project Address: 2A Allen Avenue Bilgola NSW 2107 Project : Wimbledon House Client: Wimbledon 1963 P/L	Title: East & West Elevations Drawing No: DA2-01 Stage: DEVELOPMENT APPLICATION Date: 15/08/22	Rev: A
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ANNEXURE 1

CLAUSE 4.6 VARIATION REQUEST – HEIGHT OF BUILDINGS

1 Clause 4.6 variation request – Height of buildings

1.1 Introduction

This clause 4.6 variation has been prepared having regard to the Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

1.2 Pittwater Local Environmental Plan 2014 (PLEP 2014)

1.2.1 Clause 4.3 - Height of buildings

Pursuant to clause 4.3(2) of PLEP 2014 development must not exceed the height nominated on the Height of Buildings Map, being 8.0 metres in respect of the subject site. A copy of the Height of Buildings Map is provided in Figure 1, below.

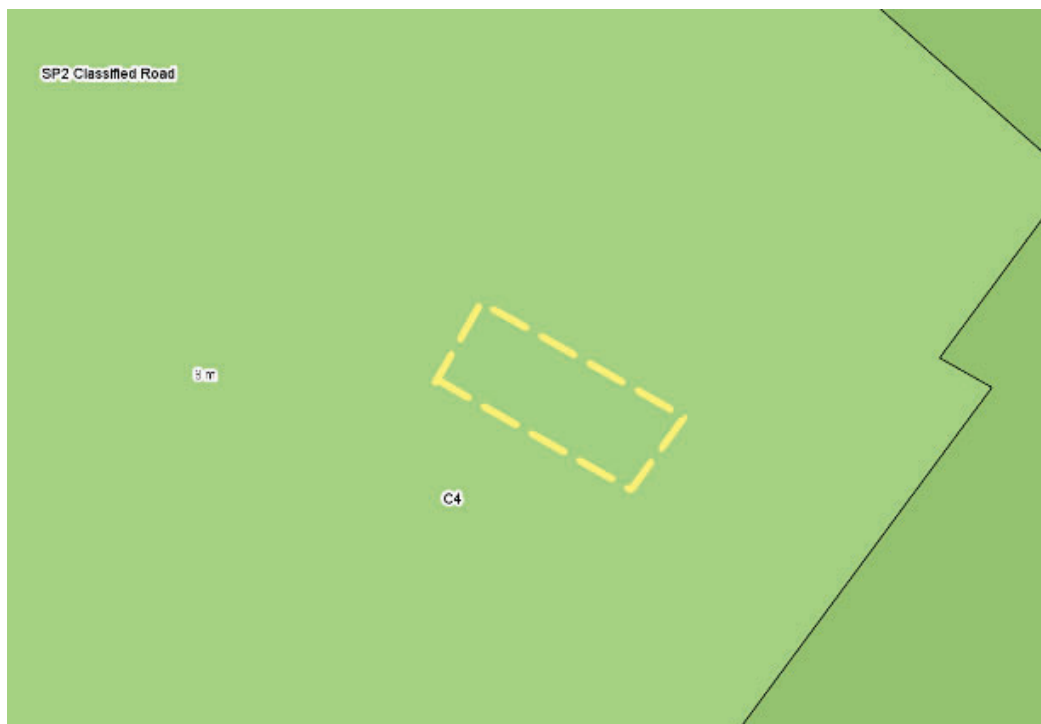


Figure 1: Extract of the Height of Buildings Map of PLEP 2014

The objectives of the height of buildings control are as follows:

- (a) *to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*
- (b) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (c) *to minimise any overshadowing of neighbouring properties,*
- (d) *to allow for the reasonable sharing of views,*
- (e) *to encourage buildings that are designed to respond sensitively to the natural topography,*
- (f) *to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

Building height is defined as follows:

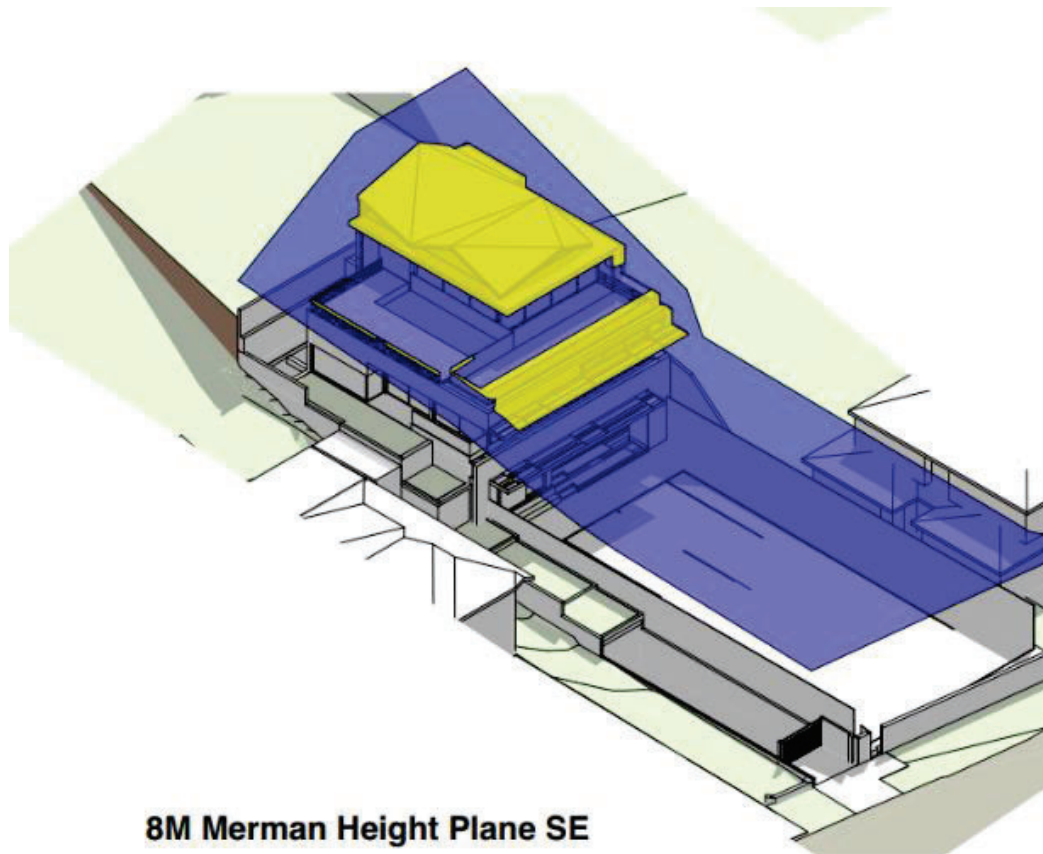
building height (or height of building) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like

I note that Council has recently adopted the interpretation of ground level (existing) as that established in the matter of *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582 where at paragraphs 73 and 74 O'Neill C found:

73. *The existing level of the site at a point beneath the existing building is the level of the land at that point. I agree with Mr McIntyre that the ground level (existing) within the footprint of the existing building is the extant excavated ground level on the site and the proposal exceeds the height of buildings development standard in those locations where the vertical distance, measured from the excavated ground level within the footprint of the existing building, to the highest point of the proposal directly above, is greater than 10.5m. The maximum exceedance is 2.01m at the north-eastern corner of the Level 3 balcony awning.*

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.*

In this regard, it has been determined that the proposed roof form breaches the height standard by up to 3.5 metres (43%) at its highest point reducing to approximately 300mm along its south eastern edge. The south eastern edge of the Level 3 terrace and associated landscape planter also breach the standard by up to 1.2 metres (18.75%) with the building height breaching elements depicted in in the building height blanket diagram at Figure 1 over page.



8M Merman Height Plane SE

Figure 1: Plan extract showing 8 metre building height blanket (in blue) determined in accordance with Merman Investments Pty Ltd v Woollahra Municipal Council with the building height breaching elements shown in yellow.

I note that the prior excavation of the site within the footprint of the existing building significantly distorts the height of buildings development standard plane overlaid above the site when compared to the topography of the hill. Having regard to paragraph 74 *Merman Investments Pty Ltd v Woollahra Municipal Council* John, Low and Associates Surveyors were engaged to prepare a survey plan to identify the assumed undisturbed levels on the site being the ground level (existing) of the land prior to any development occurring. An extract of this survey is at Figure 2 over page.

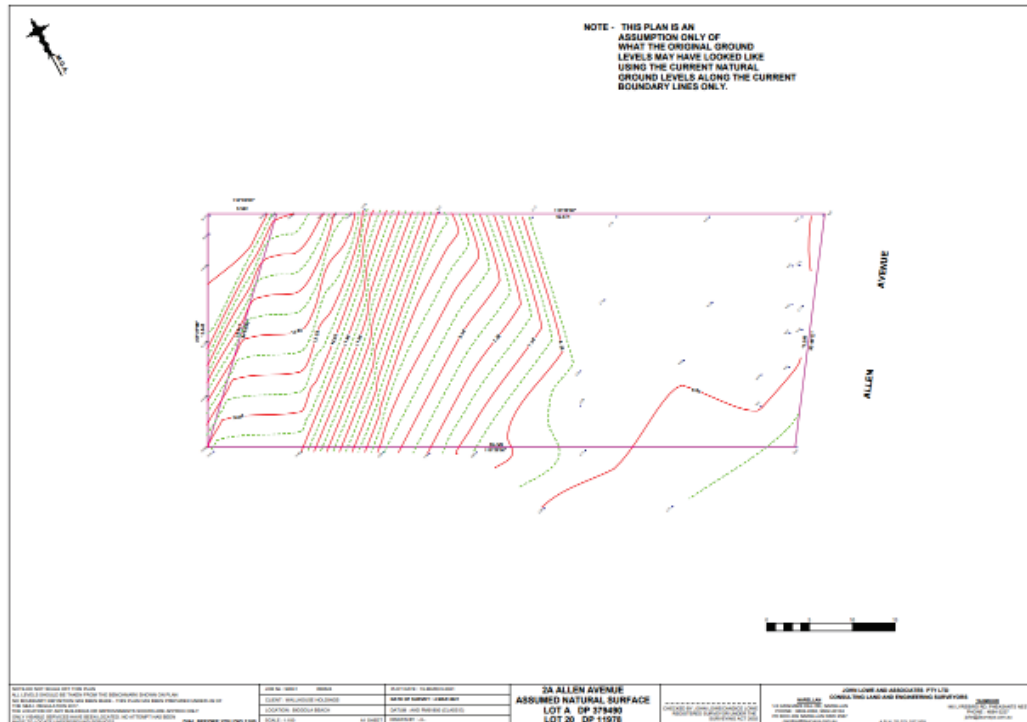
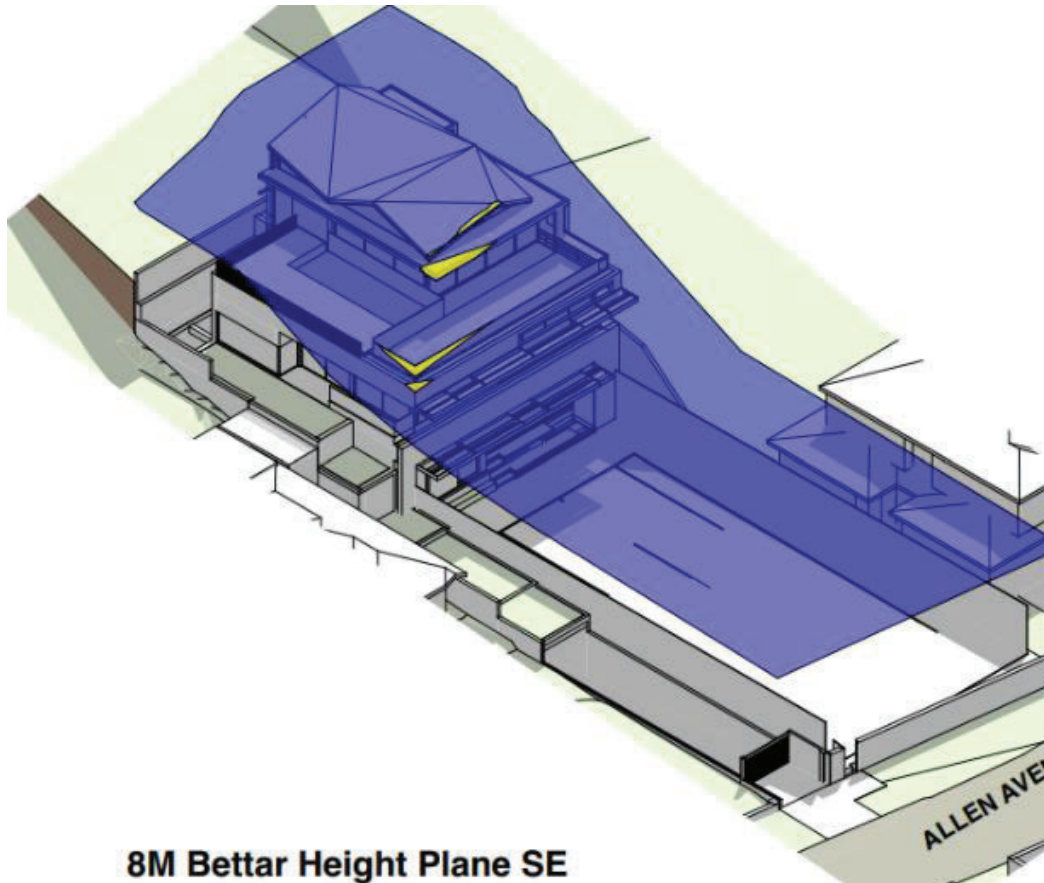


Figure 2: Survey extract showing assumed undisturbed levels on the site being the ground level (existing) of the land prior to any development occurring.

On the basis of this survey information, an 8 metre building height blanket was able to be overlaid on the plans to determine the height of the development relative to undisturbed levels being the levels of the land prior to excavation occurring to accommodate the existing dwelling house.

Whilst the majority of the proposed dwelling sits well below the 8.0m maximum building height plane, minor portions of the development extend above, with a maximum protrusion of 400mm (5%) at the south-eastern corner of the upper level roof form and 350mm (4.3%) breach of the upper level terrace and balustrade as depicted in the diagram is at Figure 3 over page.



8M Better Height Plane SE

Figure 3: Plan extract showing 8 metre building height blanket (in blue) determined from assumed undisturbed levels on the site being the ground level (existing) of the land prior to any development occurring with the building height breaching elements shown in yellow.

1.2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of PLEP 2014 provides:

The objectives of this clause are:

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

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 ("*Initial Action*") provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant's written request has in fact demonstrated the matters required to be demonstrated by clause 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner. At [90] of *Initial Action* the Court held that:

"In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard "achieve better outcomes for and from development". If objective (b) was the source of the Commissioner's test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test."

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of PLEP 2014 provides:

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.

This clause applies to the Height of Buildings development standard in clause 4.3 of PLEP 2014.

Clause 4.6(3) of PLEP 2014 provides:

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.*

The proposed development does not comply with the height of buildings development standard at clause 4.3 of PLEP 2014 which specifies a maximum building height of 8.0m above existing ground level. However, strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

The relevant arguments are set out later in this written request.

Clause 4.6(4) of PLEP 2014 provides:

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

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

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority.

The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]). The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest ***because*** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]).

The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

In accordance with Council's DDP Charter (in response to advice received from the Department of Planning, Industry and Environment, dated 2 November 2021), applications for Class 1 buildings with a variation greater than 10% to the building height development standard within PLEP 2014 may be determined by the DDP. As such, the Secretary's concurrence can be assumed by the DDP in this instance.

Clause 4.6(5), which relates to matters that must be considered by the Director-General in deciding whether to grant concurrence is not relevant, as the Council has the authority to determine this matter. Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.3 of PLEP 2014 from the operation of clause 4.6.

1.3 Relevant Case Law

In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular, the Court confirmed that

the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 continue to apply as follows:

The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].

A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].

A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].

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

A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.

These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

- 1 Is clause 4.3 of PLEP 2014 a development standard?
- 2 Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:

- (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
- 3 Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.3 and the objectives for development for in the zone?
- 4 Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
- 5 Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.3 of PLEP 2014?

5.1 Request for variation

5.1.1 Is clause 4.3 of PLEP 2014 a development standard?

The definition of “development standard” at clause 1.4 of the EP&A Act includes a provision of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

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

Clause 4.3 of PLEP 2014 prescribes a height provision that seeks to control the height of certain development. Accordingly, clause 4.3 of PLEP 2014 is a development standard.

5.1.2 Clause 4.6(3)(a) – Whether compliance with the development standard is unreasonable or unnecessary

The common approach for an applicant to demonstrate that compliance with a development standard is unreasonable or unnecessary are set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827.

Both the first approach is relevant in this instance, being that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard and because the standard has been virtually abandoned or destroyed by the Council’s own decisions in granting consent to non-conforming development within the vicinity of the site.

Consistency with objectives of the height of buildings standard

An assessment as to the consistency of the proposal when assessed against the objectives of the standard is as follows:

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

Comment: The desired future character for the Bilgola Locality, with respect to height and scale, is set out in clause A4.3 of P21 DCP, as follows:

The Bilgola 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.

As evident in the Northern Elevation (Figure 4), the proposed development has been designed to step up the slope of the land, with a maximum of two storeys above natural ground levels, ensuring that the desired character is achieved.

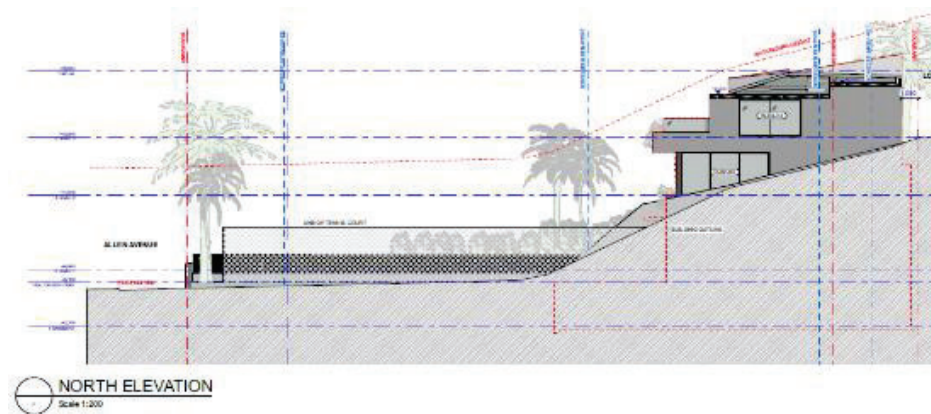


Figure 4: Extract of North Elevation

The upper floor is setback from the levels below, to ensure that it is appropriately recessive and that there is no three storey element presenting immediately to the street. The proposed development will result in a significant enhancement of landscaping on the site, ensuring that the development has the appearance of a dwelling that is integrated within a landscaped setting.

The minor protrusions of the height plane, being those at the south-eastern corner of the upper floor terrace and the south-eastern corner of the upper floor awning, do not detract from consistency with the desired future character of the Bilgola Locality.

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

Comment: The findings of Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191 are relevant in this instance:

There are many dictionary definitions of compatible. The most apposite meaning in an urban design context is capable of existing together in harmony. Compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve.

The proposed development is of a similar scale as that which currently exists on the site, noting that the existing dwelling sits atop of an exposed retaining wall at the western end of the tennis court.

As seen from adjoining properties, the proposal has a one and two storey appearance, ensuring that the perceived scale of the development is consistent with surrounding dwellings.

The proposed design response, where the dwelling steps back the site to follow the slope of the land, is entirely consistent with that seen throughout the locality on sloping sites and does not result in any adverse impacts upon adjoining dwellings such that it could be said that the resultant development is not in harmony with surrounding development.

The minor portions of the development that protrude above the 8.0m height plane do not result in a development that is incompatible with the height and scale of surrounding development.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191, I have formed the considered opinion that most observers would not find the height or bulk of the proposed development offensive, jarring or unsympathetic in the streetscape context.

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

Comment: The height non-compliance does not give rise to any unreasonable impacts upon solar access of adjoining properties, as highlighted in the solar access diagrams accompanying the application.

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

Comment: The upper floor of the proposed development has been sited to maximise views across the site from upslope properties. As demonstrated in the View Comparison prepared to support the application (DA4-02), a suitable view sharing arrangement is achieved for the property to the rear.

Of particular importance, the View Comparison confirms that the portions of the proposed development that protrude above the height plane do not attribute to the likely loss of a portion of the water views currently enjoyed.

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

Comment: The proposed development has been designed to generally align with the footprint of the existing dwelling in order to minimise disturbance across the remainder of the site. Whilst excavation is proposed, the extent of excavation is not unreasonable or excessive in the context of this application.

The proposed built form has been designed in response to the natural slope of the site, and reintroduces landscaping around the perimeter of the dwelling to more closely resemble the natural topography of the land.

The proposed breach of the building height plane does not detract from consistency with this objective.

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

Comment: The proposed development has been designed with a 2 storey dominant façade, consistent with surrounding and nearby more contemporary development. The proposed upper level is setback from the street frontage and will not be overly dominant as seen from Allen Avenue.

The façade of the development is well articulated, with a variety of materials utilised to ensure that the apparent size of the development is appropriately relieved, and landscaping is proposed around the perimeter of the dwelling and in upper level planters to soften and screen the built form. Overall, the proposed development has been designed to ensure that the visual impact of the development is appropriately minimised, with no adverse impacts upon the natural environment or nearby heritage listed street trees.

Consistency with zone objectives

The subject property is zoned C4 Environmental Living pursuant to PLEP 2014. The developments consistency with the stated objectives of the C4 zone is as follows:

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

Comment: The proposed development is a considered design response that appropriately manages the challenges associated with the natural constraints of the site. The proposed development has been sited in the location of the existing dwelling to minimise site disturbance and impacts to neighbouring properties, and has been skilfully designed to ensure that the visual impact is appropriately managed. The proposed development does not result in any adverse impacts upon significant vegetation or adjoining land with respect to natural hazards.

Overall, the proposed development is appropriately described as a low-impact development that positively contributes to the existing residential environment. The minor elements of the building that protrude beyond the 8m height plane do not detract from consistency with this objective.

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

Comment: The proposed development does not have any adverse impacts upon the environmental significance of the site, noting that the proposed development has been designed to be safe from hazards and that there is no adverse impacts to significant vegetation. Rather, the proposed development has a positive impact on such values, with a significant enhancement of the quality and quantity of landscaping on the site, and a high quality architecturally designed home. The minor elements of the building that protrude beyond the 8m height plane do not detract from consistency with this objective.

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

Comment: The proposed dwelling house is a low density development that is appropriately integrated into the slope of the land, and softened by landscaping. The minor elements of the building that protrude beyond the 8m height plane do not detract from consistency with this objective.

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

Comment: The proposed development will result in the significant enhancement of landscaping across the site, providing enhanced habitat value within the wildlife corridor. The minor elements of the building that protrude beyond the 8m height plane do not detract from consistency with this objective. Rather, noting that the non-compliance at the south-eastern corner of the dwelling is predominantly associated with a proposed elevated planter, it can be said that the proposed non-compliance directly promotes consistency with this objective.

The non-compliant component of the development, as it relates to building height, does not detract from consistency with objectives of the zone and the height of building standard objectives. Adopting the first option in *Wehbe*, strict compliance with the height of buildings standard has been demonstrated to be unreasonable and unnecessary in the circumstances of this application.

5.1.3 Clause 4.6(4)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

In *Initial Action* the Court found at [23]-[25] that:

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.

The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.

The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].

Sufficient environmental planning grounds

In my opinion, there are sufficient environmental planning grounds to justify the variation, as outlined below.

Ground 1 – Steep and artificially modified topography of the land

Sufficient environmental planning grounds exist to justify the height of buildings variation including the steep and artificially modified topography of the land which makes strict compliance difficult to achieve distributing height and floor space in a contextually appropriate manner on this particular site.

In this regard, I note that the prior excavation of the site within the footprint of the existing building distorts the height of buildings development standard plane overlaid above the site when compared to the natural undisturbed topography of the land. When the original undisturbed levels of the site are interpolated across the building footprint the proposed development would generally comply with the 8 metre height standard as depicted in Figure 5 over page.

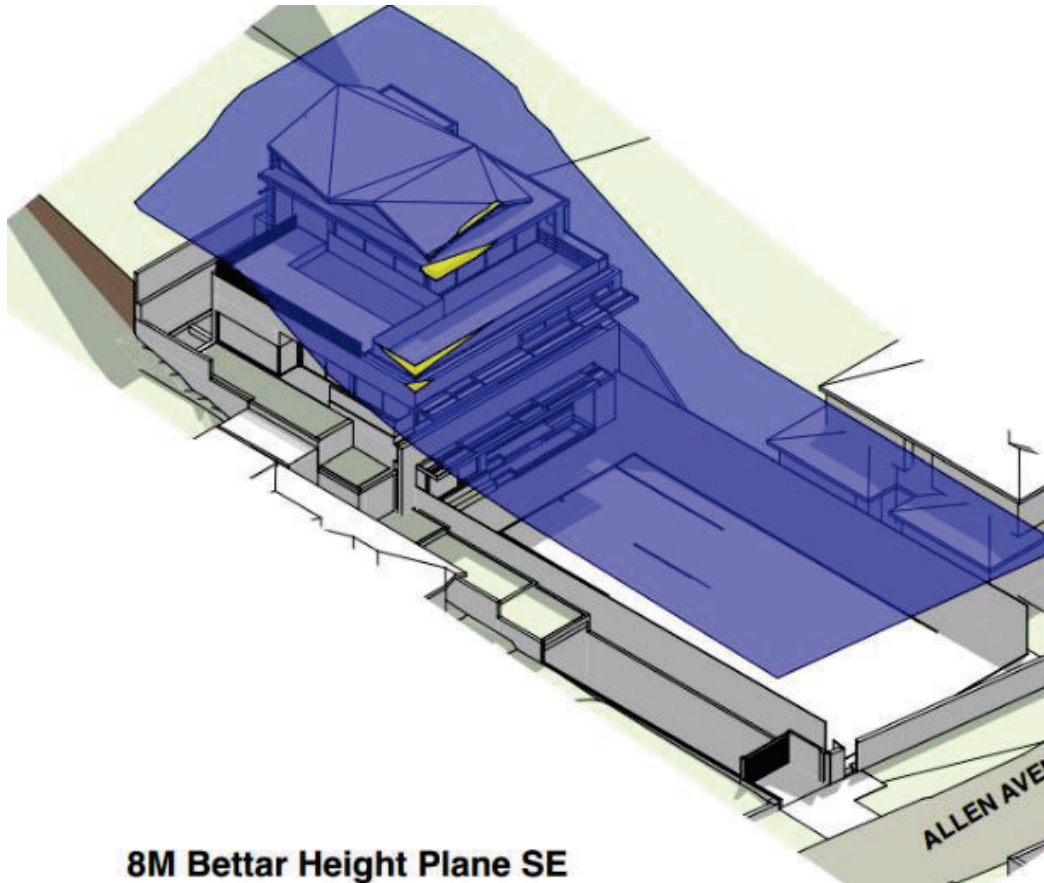


Figure 5 – Plan extract showing 8 metre building height blanket (in blue) determined from assumed undisturbed levels on the site being the ground level (existing) of the land prior to any development occurring with the building height breaching elements shown in yellow.

Consistent with the finding of O'Neill C at paragraph 73 of *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582 such circumstance can properly be described as an environmental planning ground within the meaning of cl 4.6(3)(b) of LEP 2014.

Ground 2 – Appropriate distribution of massing

The proposed development has been designed to have a single storey appearance at the rear of the building and is maintained well below the 8.0m height plane. Further, the massing of the proposed upper level is focused on the northern side of the building, to maximise the resultant view corridor across the southern side of the site, where the 2.5m maximum side setback is also provided.

It is my opinion that despite the non-compliance with the building height plane in minor areas, the proposed distribution of floor space and massing achieves a superior result compared to one where the development was built in strict accordance with the height plane. The minor elements that breach the 8.0m height standard do not attribute to any unreasonable impacts upon the amenity of adjoining properties, noting that it is the portion of the development that is compliant with the height plane that impacts upon water views currently enjoyed from the property to the rear.

Council's acceptance of the proposed height variation will ensure the orderly and economic development of the site, in so far as it will ensure a contextually appropriate built form outcome, that has been sensitively designed in response to the individual circumstances of the site, consistent with Objective 1.3(c) of the EP&A Act.

Overall, there are sufficient environmental planning grounds to justify contravening the development standard.

5.1.4 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 4.3 and the objectives of the C4 Environmental Living zone

The consent authority needs to be satisfied that the proposed development will be in the public interest. A development is said to be in the public interest if it is consistent with the objectives of the particular standard to be varied and the objectives of the zone.

Preston CJ in Initial Action (Para 27) described the relevant test for this as follows:

The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).

As demonstrated in this request, the proposed development is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest.

5.1.5 Secretary's concurrence

The Secretary's concurrence can be assumed by Council in this instance.

5.2 Conclusion

Pursuant to clause 4.6(4)(a) of PLEP 2014, the consent authority can be satisfied that this written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

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

As such, I have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a height of buildings variation in this instance.

Boston Blyth Fleming Pty Limited



Greg Boston

B Urb & Reg Plan (UNE) MPIA

Director

ITEM 4.2**DA2023/0251 - 54 GREYCLIFFE STREET, QUEENSCLIFF -
ALTERATIONS AND ADDITIONS TO A DUAL OCCUPANCY
INCLUDING A SWIMMING POOL****AUTHORISING MANAGER** Adam Richardson**TRIM FILE REF** 2023/626127**ATTACHMENTS**
1 [↓ Assessment Report](#)
2 [↓ Site Plan & Elevations](#)
3 [↓ Clause 4.6](#)**PURPOSE**

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of WLEP 2011 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2023/0251 for alterations and additions to a dual occupancy including a swimming pool on land at Lot 18 DP 8373, 54 Greycliffe Street, QUEENSCLIFF subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0251
Responsible Officer:	Brittany Harrison
Land to be developed (Address):	Lot 18 DP 8373, 54 Greycliffe Street QUEENSCLIFF NSW 2096
Proposed Development:	Alterations and additions to a dual occupancy including a swimming pool
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	Yes
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Leslie Anthony Cassar Diana Nancy Cassar
Applicant:	Pittwater Design & Draft
Application Lodged:	22/03/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	23/08/2023 to 06/09/2023
Advertised:	Not Advertised
Submissions Received:	5
Clause 4.6 Variation:	4.3 Height of buildings: Dwelling: 14.0% and Rear Balconies: 41.4%
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,182,996.00

EXECUTIVE SUMMARY

This development application seeks consent for the alterations and additions to an existing dual occupancy including a swimming pool.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to the proposal contravening Clause 4.3 Height of buildings under the WLEP 2011 by more than 10.0% for a Class 2 building, that is supported by a written Clause 4.6 request.

The LEP's maximum building height is 8.5 metres. The proposal results in a maximum building height of 12.02 metres when measured from the rear balconies and associated vergola, with the height of the upper floor addition to be 9.7 metres, with a variation of 41.0% and 14.4%, respectively. The maximum height breach (12.02 metres) arises in this location due to the inclusion of a rear balcony and vergola associated with Unit 2 over the section of the site where a steep change in the sites topography occurs. The second height breach to the building is due to an upper floor addition located over the existing floors, which is centrally located within the building roof area.

The existing dual occupancy is a prohibited land use within the R2 Low Density Residential zone under the provisions of the WLEP 2011. The proposed development relies upon existing use rights, which has been adequately demonstrated by the applicant, satisfying the requirements under Section 4.65 of the *Environmental Planning and Assessment Act 1979 (EP&A Act 1979)*.

The development application was notified for a period of fourteen (14) days, as stated within Council's Community Participation Plan, with five (5) submission received. The concerns raised in this submissions are addressed under the 'submissions' section of this report. Two (2) sets of amended plans were received during the assessment process to address concerns raised, which resulted in additional comments from the initial objectors.

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

PROPOSED DEVELOPMENT IN DETAIL

This application seeks development consent for the alterations and additions to a dual occupancy including a swimming pool.

Specifically, the works comprise of the following:

- Excavation to accommodate a plant room and lift underneath existing building;
- Demolition works to facilitate extension and internal reconfigurations to both Unit 1 and Unit 2, with the incorporation of rear balconies;
- Addition of a common foyer/entrance with lift and internal staircase;
- Addition of an upper floor (Unit 2) to accommodate additional floor space and balcony;
- Construction of a new three (3) car space garage and driveway;
- Various window amendments and additions;
- Addition of a common deck area to the rear lower level, including the excavation for a swimming pool; and
- Associated landscaping works and addition of rear access stairs down towards Manly Lagoon.

ASSESSMENT INTRODUCTION

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

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Local Environmental Plan 2011 - 6.2 Earthworks
Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land
Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - C3 Parking Facilities
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D2 Private Open Space
Warringah Development Control Plan - D6 Access to Sunlight
Warringah Development Control Plan - D7 Views
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - D9 Building Bulk

SITE DESCRIPTION

Property Description:	Lot 18 DP 8373 , 54 Greycliffe Street QUEENSCLIFF NSW 2096
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the south-western side of Greycliffe Street.</p> <p>The site is legally identified as Lot 18 in Deposited Plan 8373, No. 54 Greycliffe Street, Queenscliff.</p> <p>The site is regular in shape with a street frontage of 14.03 metres and an average depth of 44.56 metres. The site has a surveyed area of 597.6m².</p> <p>The site is located within the R2 Low Density Residential zone under the provisions of the <i>Warringah Local Environmental Plan 2011</i> and accommodates an existing dual occupancy. The site is accessed by a private laneway associated with Greycliffe Street.</p> <p>The site topography slopes downward from north to south by approximately 17.0m.</p>

The site consists of a garden area to the front of the building and a lawn area and sloped garden with rock outcrops to the rear. The site adjoins Aitken Reserve and Manly Lagoon.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by dwelling houses, dual occupancies and residential flat buildings of various architectural designs. A heritage item in the vicinity known as "San Marino" is located on the northern side of Greycliffe Street. Manly Lagoon, Aitken Reserve and Lagoon Park are located to the south, with Queenscliff Beach and the ocean located to the east.

Map:



SITE HISTORY

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

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

Current Application History

The development application was initially notified for a period of fourteen (14) days, as stated within Council's Community Participation Plan and resulted in five (5) submissions.

Council requested amended plans and additional information on the 5 June 2023, to address the clause requirements/objectives for the following:

- Clause 4.3 Height of Buildings of the *Warringah Local Environmental Plan 2011*;
- Clause B1 Wall Heights, Clause B3 Side Boundary Envelope, Clause D1 Landscaped Open Space and Bushland Setting, Clause D7 Views and Clause D9 Building Bulk of the Warringah Development Control Plan 2011; and
- Concerns regarding to Landscaping and Stormwater.

Additional information and amended plans were submitted to Council on the 14 August 2023 which was re-notified for an additional fourteen (14) days, resulting in additional comments from three (3) original objectors. A further set of amended plans were received on the 30 September 2023, which increased the eastern side setback and reduced the floor space to the upper floor level. Due to a reduction in environmental impact, these plans were not re-notified as per Council's Community Participation Plan.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 applies to this proposal.
Section 4.15 (1) (a)(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 recommended 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 building height, wall height, side boundary envelope, landscaped open space, view loss, building bulk and concerns raised by Council's Development Engineer and Landscape Officer.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent</p>

Section 4.15 Matters for Consideration	Comments
	<p>authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a recommended condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a recommended condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a recommended condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of a recommended 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 2011 section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

- Does the existing use satisfy the definition of "existing use" under the *Environmental Planning and Assessment Act 1979* (the 'Act')?

Section 4.65 of the Act defines an existing use as:

"(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for this Division, have the effect of prohibiting that use, and

(b) the use of a building, work or land:

- (i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
- (ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse."*

This necessarily requires the following questions to be answered:

1. Was the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for this Division, have the effect of prohibiting that use?

Comment

The Applicant has provided evidence that construction of the building predates Council's records, therefore, the original consent for the use could not be obtained. However, the applicant has provided evidence in the form of a development consent (No. 86/108) issued with respect to the subject site on 14 April 1986 for the *"provision of 1 additional off-street carparking space and erection of a carport fence in association with the existing residential flat building (containing 2 units)"*.

The evidence provided confirms the below, in the form of an assessment report for Consent No. 86/108:

"Present Development: Existing duplex residential flat building..."

"Planning Control: Residential 2(a) under Warringah Local Environmental Plan 1985. Proposal permissible as additions to an existing use."

"Introduction: ...following a search of Council's records, no consents or approvals can be found for the duplex. The applicant was subsequently requested to supply proof of existing use rights. Evidence submitted by the applicant on 21st October 1985 (being MWS&DB plans of the duplex building) indicated that the flats existed in 1939. Existing use rights are therefore acknowledged."

The stamped plan, endorsed by Council (No. M1-85-1 dated 10.8.85,) also refers to the existing building as a duplex consisting of 2 units.

It is noted that the proposed development does not conform to the current definition of a residential flat building but rather a dual occupancy (attached), as defined under the current *Warringah Local Environmental Plan 2011 (WLEP 2011)*: *"dual occupancy (attached) means 2 dwellings on one lot of land that are attached to each other, but does not include a secondary dwelling"*.

The above information reveals that the use of the building commenced as a lawful purpose prior to the coming into force of *WLEP 2011* on 9 December 2011.

2. Was the use of the building granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?

Comment

As discussed above, the evidence revealed that the use of the existing building as a residential flat building (with 2 units), was permitted in 1986, prior to the coming into force of *WLEP 2011* on 9 December 2011.

As defined under the current *WLEP 2011*: "*dual occupancy (attached) means 2 dwellings on one lot of land that are attached to each other, but does not include a secondary dwelling*". Therefore, the building now falls under the current definition of a dual occupancy rather than a residential flat building.

3. Has the use of the building been carried out within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse?

Comment

The applicant states that the use of the building for the purpose of a residential flat building containing two units has been maintained consistently and has not been abandoned. The property was sold in 2022 as a duplex and has been separately tenanted since that time. The above mentioned consent (No. 86/108) approved alterations to the site as an existing residential flat building (with 2 units). It is considered that the building was being used for two (2) separate occupancies prior to the granting of that consent. As there is no record of any development applications since, it is considered that the building has been continually used as a dual occupancy.

- **What is "the land on which the existing use was carried out" for the purposes of cl 162-167 of the Environmental Planning and Assessment Regulation 2021 ("the Regulation")?**

Meagher JA in *Steedman v Baulkham Hills Shire Council* [No. 1] (1991) 87 LGERA 26 stated (at 27) the rule to be applied as follows: "*if the land is rightly regarded as a unit and it is found that part of its area was physically used for the purpose in question it follows that the land was used for that purpose*".

Comment

Having regard to the above case law, it is noted that the whole of the area of the land was physically used for the purpose in question and therefore, it is considered that the land was used for that purpose and that existing use rights apply to the whole of the subject site.

- **What are the planning principles that should be adopted in dealing with an application to alter enlarge or rebuild and existing use?**

The judgement in *Fodor Investments v Hornsby Shire Council* (2005) NSWLEC 71, sets out the planning principles that should be applied in dealing with development applications seeking to carry out development on the basis of existing use rights. The principles of *Fodor Investments v Hornsby Shire Council* (2005) NSWLEC 71 however have been varied by more recent judgements of the Court to the extent described in *Saffioti v Kiama Municipal Council* [2019] NSWLEC 57 and *Made property Group Pty Ltd v North Sydney Council* [2020] NSWLEC 1332 in that the planning controls apply to the existing use provided they do not derogate, due to the planning controls within an EPI being 'incorporated provisions' and therefore matters for consideration as described within Clause 4.67 of the Environmental Planning and Assessment Act, 1979.

The following four principles adopted by the NSW Land and Environment Court in this case will have

general application in dealing with development applications that rely on existing use rights:

1. How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?

While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessments.

Comment

Planning Principle 1 clearly stipulates that whilst development (relying on existing use rights) is not strictly bound against the numerical controls governing bulk and scale, such controls still need to be taken into account in order to gain an informed understanding of the future context and character of surrounding development.

The focus of the assessment therefore, is to draw a comparison between the height, bulk, scale and density of the proposed and existing development in the surrounding area and what is likely to occur in the vicinity in the future, based on the applicable planning controls.

LEP:

Building Height: The site is subject to the building height development standard of 8.5 metres, as applicable to all buildings within in the R2 Low Density Residential zone. The proposed development will result in a maximum building height of 12.02 metres (rear balconies) and 9.7 metres (building), with variations of 41.0% and 14.4% respectively. A detailed assessment has been undertaken and is provided under 'Clause 4.6 Exceptions to development standards', elsewhere within the report. The extent of breach is found to be acceptable in this particular instance, which has been assessed in regard to the existing built form and character of the subject site and surrounding area.

DCP:

Wall Height: The required maximum wall height is 7.2 metres. The proposed development will result in a wall height of 8.4 metres to both the eastern and western elevations. The numerical non-compliance to wall height is discussed in detail under 'Clause B1 Wall Height', elsewhere in this report, where it is found to be acceptable.

Side Boundary Envelope: The site is subject to a building envelope which is determined by projecting planes at 45 degrees from a height of 5.0 metres above the natural ground level of the eastern and western side boundaries. The proposed development will result in an encroachment to both side boundary envelopes. The numerical non-compliance to Side Boundary Envelope is discussed in detail under 'Clause B3 Side Boundary Envelope', elsewhere in this report, where it is found to be acceptable.

Side Boundary Setbacks: The required side setback distance is 0.9 metres. The works comply with the requirements of this control, exhibiting side setbacks to the eastern and western boundary of more than 0.9 metres.

Front Boundary Setbacks: The required front setback is 6.5 metres. The proposed development consists of a garage within the front setback area, however, all other works demonstrate compliance. The numerical non-compliance to Front Boundary Setbacks is discussed in detail under 'Clause B7 Front Boundary Setbacks', elsewhere in this report, where it is found to be acceptable.

Rear Boundary Setbacks: The required rear setback distance is 6.0 metres. The works comply with the requirements of this control, exhibiting a rear setback to the southern boundary of more than 6.0 metres (via a recommended condition).

Landscaped Open Space: The site requires a minimum of 40.0% (239.04m²) landscaped open space with minimum dimensions (2.0m x 2.0m), natural features such as rock outcrops and the water surface of a swimming pool are also included. The proposed development will result in a landscaped open space area of 38.0% (226.9m²). The numerical non-compliance to Landscaped Open Space is discussed in detail under 'Clause D1 Landscaped Open Space', elsewhere in this report, where it is found to be acceptable.

Adjoining and Surrounding Land: Surrounding land uses include dwelling houses, dual occupancies and residential flat buildings (definitions as stated within the *Warringah Local Environmental Plan 2011*). The surrounding locality (Queenscliff) and the immediate vicinity include development of similar height, bulk and scale and in some instances even greater height, scale and density. The buildings along the southern side of Greycliffe Street, present large facades with balconies when viewed from Manly Lagoon or nearby reserves.

The older style of the existing dual occupancy being a large brick building with a blank façade will be updated to reflect a modernised building with articulation and visual interest, keeping in line with the character and style of other recently developed buildings within the vicinity and Queenscliff as a whole. The building will appear as two (2) storeys when viewed from the street, and a three (3) story build from adjoining properties and the public domain from the south (Manly Lagoon etc.). The lower level laundry/storage and outdoor deck area may appear as a four (4) storey build in some instances however, this is in keeping with various builds along the southern side of Greycliffe Street (e.g. No. 50 and 52 Greycliffe Street).

In this instance, the proposed development is not considered out of character or inconsistent with the surrounding bulk and scale. As such, the proposed development will provide a suitable relationship between the subject site, adjacent and surrounding sites in relation to the existing and future context.

2. What is the relevance of the building in which the existing use takes place?

Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.

Comment

The proposed development seeks consent for alterations and additions to the existing building with two (2) occupancies. As stated above, the proposed development will result in acceptable bulk and scale with a visual presentation that is to commensurate with adjoining and nearby buildings, and consistent with development envisaged for this location (Queenscliff).

3. What are the impacts on adjoining land?

The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.

Comment

Clause D6 stipulates that at least 50.0% of the required area of private open space of each dwelling, and at least 50.0% of the required area of private open space of adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9.00am and 3.00pm on June 21. Refer to 'Clause D6 Access to Sunlight' elsewhere in this report.

Surrounding properties enjoy views of Manly Lagoon, district views, park views and/or Ocean and beach views. Amended plans were submitted with an accompanying view loss study demonstrating that no unacceptable view impacts shall occur. View loss will be discussed in further detail under 'Clause D7 Views', elsewhere in this report.

The building provides for acceptable spatial separation between adjoining development. Due to the location and topography of the area and the sensitivity of views, privacy of a high level is somewhat limited. The proposed works have taken privacy into consideration, which has been found to be acceptable (subject to conditions). Privacy is discussed in further detail under 'Clause D8 Privacy', elsewhere in this report.

4. What is the internal amenity?

Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.

Comment

The proposed alterations and additions will provide for greater internal amenity compared to that of the existing building. The proposal will allow for both private and common open space areas for the units, whereas, previously no private open space areas existed. Although, non-compliant with the numerical requirements of Clause D2 Private Open Space, the provided areas are considered an improvement. Private Open Space is discussed under 'Clause D2 Private Open Space', elsewhere in this report.

Conclusion

Existing use rights have been established as detailed in the above assessment. Alterations to the use was approved under a previous environmental planning instrument (*Warringah Local Environmental Plan 1985*) and, therefore, is a lawful use. Subsequently, the use can be retained under the current environmental planning instrument (*Warringah Local Environmental Plan 2011*).

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 23/08/2023 to 06/09/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 5 submission/s from:

Name:	Address:
Mr Michael Bruno Sumner	49 Greycliffe Street QUEENSCLIFF NSW 2096
Mr Robert Martin Bowles	50 Greycliffe Street QUEENSCLIFF NSW 2096
Michael Royden Upfold	56 Greycliffe Street QUEENSCLIFF NSW 2096
Ms Marianne Troop	52 Greycliffe Street QUEENSCLIFF NSW 2096
Mr Michael Vincent Collins Mrs Hollie Rebecca Collins	58 Greycliffe Street QUEENSCLIFF NSW 2096

Five (5) submissions were received in regard to the initial proposal, with a further three (3) additional comments being received in relation to the proposal 'as amended'. The issues raised in these submission will be addressed below:

- ***Concerns relating to the cost of works (\$ 1.18 Million) for the scale of work being proposed under this application.***

Comment

As per Council's lodgment requirements any development with an estimated cost of \$1,000,001 or greater, requires a Quantity Surveyors Report or Cost Summary Report completed by a Quantity Surveyor. The application has been accompanied by Quantity Surveyors Report Form which has been completed by a qualified Quantity Surveyor. In this regard the estimated cost of works is considered to be a genuine estimate that may be relied upon.

- ***The proposed height resulting in a feeling of enclosure when viewed from the street, perceived as an apartment. Building to be viewed as five (5) storeys from Manly Lagoon and associated reserves, and be highly visible from the public domain.***

Comment

The proposed height results in a breach to the building height standard (8.5 metres) stipulated under the *Warringah Local Environmental Plan 2011 (WLEP 2011)*, which applies to the subject site and surrounding area. The building height is discussed under 'Clause 4.6 Exceptions to development standards', elsewhere in this report. It is noted that the proposed development relies on existing use rights as a dual occupancy, therefore, the numerical requirements within the relevant clauses of the *WLEP 2011*, do not strictly apply, however, is relevant to the assessment of the application. A detailed assessment of the existing use rights has been undertaken elsewhere in this report.

The proposed works will result in a three (3) storey building, with a lower level for laundry/storage/plant room. It is acceptable that the building may from certain angles be perceived as a four (4) storey building. However, this is not considered inconsistent with the surrounding area. Several properties in the immediate vicinity (No. 50 and 52) can be perceived as four (4) storey buildings, when viewed from similar areas. In addition, Queenscliff includes multiple residential flat buildings of a greater scale, height and density which are considered more visually dominant.

When viewed from the street, the development will be more likely perceived as a two (2) storey development, particularly due to the design of the build and sloping topography of the land. It

can be considered that the development located on the higher side of the street (North) give arise to more visual dominance than that of the lower side (south), where the subject site is located.

- ***Privacy concerns to No. 49, 52, 56 and No. 58 Greycliffe Street, Queenscliff in relation to the proposed windows, balconies and the swimming pool. Rear balconies of 3570mm in depth creates concern, requests that balconies be reduced in depth by 750mm.***

Comment

Privacy will be addressed in further detail for No. 52 and No. 56 Greycliffe Street, under 'Clause D8 Privacy', elsewhere in this report. No. 49 Greycliffe is located to the north across the road and is not considered to be unacceptably impacted in relation to privacy. The front elevation of the build consists of limited windows, with the amended plans deleting the upper floor front balcony. No. 58 Greycliffe is located towards the west and is not an immediate adjoining property. The development is not considered to unacceptably impact this property in relation to privacy.

Amended plans were received which includes an overall 0.5 metre reduction in the depth of the rear balconies. This amendment is considered acceptable, reducing privacy impacts and view loss impacts without causing a detriment to the proposed amenity. The rear balconies are consistent with surrounding balconies within the area.

- ***Concerns relating to the proposed garage which will encroach into the front setback area and extend for a length of approximately 13.5 metres, visually impacting No. 56 Greycliffe Street and front courtyard area. Concerns over the small courtyard at the entrance of the subject site.***

Comment

The proposed garage is located within the front setback area for a length of approximately 5.9 metres along the front boundary line with a setback of 0.2 metres. It is evident that majority of the properties along Greycliffe Street and Queenscliff in general consist of parking structures within the front setback area due to the nature of the sloping topography of the area. Although, landscaping within the front setback area has been reduced, the overall landscaped open space is near compliance with the relevant numerical requirements. The proposed garage location, front setback and landscaping is consistent with surrounding properties in the area.

It is noted that the garage will extend along the western boundary (adjoining No. 56 Greycliffe) due to the tandem arrangement of the garage. Amended plans have been received that incorporate materials to provide visual relief along the western elevation of the garage, compared to the original proposal. It is noted that the proposed garage is compliant with the side boundary envelope control of the WDCP 2011. Landscaping has been included along the western side setback area to aid in visual softening. The garage will be adjacent to the No. 56 Greycliffe's garage and front entrance/courtyard area. This area however, is not No. 56 Greycliffe's private open space area, this area being at the rear of the property towards the views and living spaces of the building.

- ***The extensions towards the north and south and upper floor addition will impact the access to sunlight to adjoining properties No. 52 and No. 56 Greycliffe Street.***

Comment

Shadow diagrams have been provided with this application. A merit consideration has been undertaken within this report under 'Clause D6 Access to Sunlight'.

- ***The upper floor addition will result in a build that breaches side boundary envelope, diminish the visual quality of the street and be identified as the tallest building on Greycliffe. The amended plans increased the volume of the upper floor, located the mass towards the street (front of property) and removed privacy screens from balconies.***

Comment

As previously mentioned the proposed development relies on existing use rights as a dual occupancy. Therefore, the numerical controls within the Warringah Development Control Plan 2011, do not strictly apply. However, a discussion relating to the side boundary envelope non-compliances has been undertaken elsewhere in this report, refer to 'Clause B5 Side Boundary Setbacks'. The proposal although non-compliant with building height, will not result in the tallest building on Greycliffe. Many buildings encroach the building height standard of 8.5 metres, which consist of dwelling houses and residential flat buildings.

Amended plans have been received that reduced the floor space of the upper floor, with the mass located towards the street to respond to the sloping topography of the site. As mentioned, the development will likely be perceived as a two (2) storey build from the street. No privacy screens are included on the proposed balconies, due to the sensitive nature of surrounding views.

- ***Concerns regarding potential view loss to properties No. 50 and 56 Greycliffe Street, particularly in relation to rear balconies.***

Comment

Refer to 'Clause D7 Views' for a detailed view loss assessment, elsewhere in this report. Notwithstanding this, the proposed development was found to be acceptable.

- **Stormwater Concerns.**

Comment

Various concerns have been raised in relation to the original and amended Stormwater system. Council's Development and Water Management Team have reviewed the plans/proposal and are in support subject to conditions. It is therefore considered that the newly amended Stormwater system is acceptable and will not result in adverse impacts, subject to recommended conditions.

- **Geotechnical Report - concerns relating to the swimming pool/spa/rear stairs and the impacts these elements can cause to existing rock outcrops. Lack of swimming pool/spa information.**

Comment

The proposal has been accompanied by a Geotechnical Report which has been prepared by a suitable qualified person and mentions the 'construction of new swimming pool and associated works'. This report has been reviewed by Council's Development Engineer. Conditions have been provided to ensure that the recommendations of the report are adhered to. An additional condition has been included for a Dilapidation Report to adjoining properties. Council's Landscape and the Aboriginal Heritage Office has reviewed the proposal and provided recommendations. The large rock outcrop to the rear of the site that adjoining Aitken Reserve is not determined to be impacted by the pool works. The rear access stairs have been deleted via a recommended condition due to an absence of information in relation to this structure.

The proposal has included the location of the swimming pool on site and the swimming pool section. It is considered that enough information has been submitted to assess the swimming pool.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>Supported, subject to conditions.</p> <p>The application has been investigated with respects to aspects relevant the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Landscape Officer	<p>Supported, subject to conditions.</p> <p>The application is assessed by Landscape Referral against the <i>Warringah Local Environmental Plan 2011</i> and the Warringah Development Control Plan 2011 controls (but not limited to):</p> <ul style="list-style-type: none"> • D1 Landscaped Open Space and Bushland Setting. • E1 Preservation of Trees or Bushland Vegetation and E2 Prescribed Vegetation. • E6 Retaining unique environmental features. • E7 Development on land adjoining public open space. <p>Below the existing stone walling within the rear of the property, existing landscape features, rock outcrops and vegetation, of high visual and physical aesthetics exist as a transition from residential land to adjoining public open space. The submitted Arboricultural Impact Assessment recommends removal of four of the existing trees on the lower slopes and this is not supported.</p> <p>An updated Landscape Plan is submitted and indicates retention of these species (tree numbers 6, 7 and 8) except for existing tree number 5 located within the proposed footprint of the pool and tree number 9 located within the proposed footprint of external stairs. Should the application be approved Landscape Referral raise no objections subject to tree replacement with two (2) locally native trees within the lower slopes.</p> <p>The updated Landscape Plan is generally acceptable subject to conditions as recommended in regard to new planting requirements.</p>

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	<p><i>Supported, subject to conditions.</i></p> <p>The proposal seeks approval for alterations and additions to an existing dual occupancy.</p> <p>The comments in this referral relate to the following applicable biodiversity controls:</p> <ul style="list-style-type: none"> • SEPP 2018 (Coastal Environment) - Clause 13 Development on land within the coastal environment area . • Warringah DCP Clause E2 Prescribed Vegetation. • Warringah DCP Clause E4 Wildlife Corridors. • Warringah DCP Clause E6 Retaining unique environmental features. <p>The development would take place in previously disturbed areas of the site and is unlikely to impact native flora and fauna. However, no landscaping plan has been submitted with the application even though landscaping works will be undertaken. It is noted that the Landscape referral section have requested additional information to provide greater clarity on proposed landscaping.</p> <p>Planner Note: A Landscape Plan has been provided. The Landscape Officer has incorporated relevant conditions in regard to the proposed landscaping.</p>
NECC (Coast and Catchments)	<p><i>Supported, no conditions required.</i></p> <p><u>General Comments</u></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 and - Relevant LEP and DCP clauses <p><u>Coastal Management Act 2016</u></p> <p>The subject site has been identified as being within the coastal zone and therefore the Coastal Management Act 2016 is applicable to this DA. The proposed development is considered to be consistent with the objects, as set out under Part 1 Section 3 of the Coastal Management Act 2016.</p> <p><u>State Environmental Planning Policy (Resilience & Hazards) 2021</u></p> <p>The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP). Hence, Clauses 2.10, 2.11 and 2.12 apply for this DA. On internal assessment the DA satisfies requirements under clauses 2.10, 2.11</p>

Internal Referral Body	Comments
	<p>and 2.12 of the SEPP. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021</p> <p><u>Warringah LEP 2011 and Warringah DCP 2011</u></p> <p>The proposal is considered to comply with clause 6.5 of Warringah LEP 2011 and E9 of Warringah DCP 2011.</p>
NECC (Development Engineering)	<p><i>Supported, subject to conditions.</i></p> <p>The application seeks consent for alterations and additions to a dual occupancy including a swimming pool.</p> <p>Referral 1 - 20/06/2023</p> <p><u>Access</u></p> <p>The proposal includes the construction of a suspended garage at the location of the existing parking facility. The proposed width of the garage is 5.2m, which does not comply with current AS 2890.1 requirements. To allow for two (2) parked vehicles side by side, the garage must be a minimum of 6.0m wide. The proposal will have to be amended to allow for a 6.0m wide garage in accordance with AS 2890.1. The proposal will also require reconstruction of the existing vehicle crossing to suite the proposed garage. Driveway must be in compliance with Council's Standard Vehicle Crossing Profile- Normal.</p> <p>The Geotechnical Report prepared by ASCENTGEO Geotechnical Consulting, dated 28/11/2022, is noted. All recommendations included in the report are to be incorporated into the proposal.</p> <p><u>Stormwater</u></p> <p>The subject site is a low level property, falling towards the rear property boundary into Aitken Reserve. The Stormwater Asset Plan prepared by Barrenjoey Consulting Engineers, Drawing No. 221101-CIV1, dated 23/02/2023 is noted. The plan proposes that the existing overland flow path located downstream of the box culvert is demolished. The plan also proposes that the existing box culvert is extended towards the rear property boundary within the easement, discharging stormwater into a new open swale which directs flows towards the existing outlet into Aitken Reserve. The plan does not provide enough detail relating to the proposed works or show how stormwater will be managed for the proposal. There is an existing 0.61m wide easement along the western property boundary. In accordance with Cl 6.1 of Council's Policy (Water Management for Development Policy), no permanent structures (e.g. stairs) are permitted within the easement. Additionally, no structural elements are permitted within the zone of influence for the existing & proposed box culvert as per Cl 6.1.1.1.2 in Council's Policy.</p> <p>The applicant is requested to provide Stormwater Engineering Plans prepared by an appropriately qualified and practicing Civil or</p>

Internal Referral Body	Comments
	<p>Hydraulic Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG). The plans are to include hydraulic calculations and design for the proposed drainage system in accordance with Council's Policy, Council's Engineering Design Specification - AUSPEC 1 and AS/NZS 3500. The plans must show that the proposed drainage system can cater for all storms up to and including the 5% AEP, including HGL analysis. The plans must include all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. The applicant is also requested to provide the DRAINS model for these calculations.</p> <p><u>Before assessment can continue the following information is required:</u></p> <ol style="list-style-type: none"> 1. Amended Architectural Plans which include: <ol style="list-style-type: none"> (i) A parking facility that complies with AS 2890.1 requirements. (ii) The exact location of the easement and the location of the existing & proposed Council box culvert. This information must be show in plan view and section view. All structures must be clear of the zone of influence for the culvert as per CI 6.1.1.1.2 in Council's Policy. (iii) Remove proposed staircase from easement in accordance with CL 6.1 of Council's Policy. 2. Stormwater Engineering Plans as noted above. <p>Referral 2 - 29/09/2023</p> <p><u>Access</u> The amended Architectural Plans prepared by Pittwater Design Draft, dated 1/08/2023 are noted. The amended plans includes a parking facility which complies with AS 2890.1 requirements. The new parking facility will require the reconstruction of the existing vehicle crossing. The new vehicle crossing is to be 5.85 metres wide at edge of road bitumen and 5.85 metres wide at boundary in accordance with Northern Beaches Council Standards. Driveway must be in compliance with Council's Standard Vehicle Crossing Profile- Normal.</p> <p><u>Stormwater</u> The Stormwater Management Plan prepared by Barrenjoey Consulting Engineers, Drawing No. 221101-SW1, Rev A, dated 3/08/2023, is noted. The plan proposes that stormwater captured on the site is discharged into the existing overland flow path located downstream of the box culvert.</p> <p>The amended Architectural Plans show the location of the existing easement and box culvert. All structures must be clear of the zone of influence for the culvert as per CI 6.1.1.1.2 in Council's Policy. The staircase within the existing easement is to remain as no works are proposed within this area. No permanent structures are to be built within the existing easement in accordance with CL 6.1 of Council's</p>

Internal Referral Body	Comments
	<p>Policy.</p> <p>No objections to proposal, subject to conditions.</p>
NECC (Flooding)	<p><i>Supported, subject to conditions.</i></p> <p>The development proposes alterations and additions to the existing dual occupancy and the construction of a new swimming pool.</p> <p>Subject to conditions the development is compliant with Council's flood related development controls.</p>
NECC (Riparian Lands and Creeks)	<p><i>Supported, subject to conditions.</i></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 Water Management for Development Policy. <p>The site abuts Manly Lagoon on land identified as waterways and riparian land. As such, the development must not significantly impact on the biophysical, hydrological or ecological integrity of the lagoon, or the quantity and quality of surface and ground water flows that it receives.</p> <p>Stormwater treatment measures must be maintained at all times in accordance with manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.</p> <p>Appropriate 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>
NECC (Water Management)	<p><i>Supported, subject to conditions.</i></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>The proposal increases hard surfaces by more than 50 square metres, triggering Stormwater Quality Requirements under the Council Water Management for Development Policy.</p> <p>A rainwater tank must be installed.</p> <p>The applicant must install a filtration device (such as a sediment control pit or absorption trench) that captures organic matter and coarse sediments prior to discharge of stormwater from the land. All stormwater treatment measures must make provision for convenient</p>

Internal Referral Body	Comments
	<p>and safe regular inspection, periodic cleaning, and maintenance.</p> <p>Stormwater treatment measures must be maintained at all times in accordance with manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.</p> <p>On assessment, the proposal is considered acceptable.</p>
Parks, reserves, beaches, foreshore	<p>Supported, subject to conditions.</p> <p>The development site adjoins Aitkin Reserve and Manly Lagoon foreshore land that is located downslope of the property. The adjoining land is zoned RE1 Public Recreation under <i>Warringah Local Environmental Plan 2011 (WLEP)</i>, and the application is assessed by Parks Reserves and Foreshores Referral against <i>WLEP</i> and the following Warringah Development Control Plan 2011 (WDCP) controls (but not limited to): E7 Development on land adjoining public open space.</p> <p>The objectives considered under the <i>WLEP</i> RE1 zone include to "prevent development that could destroy, damage or otherwise have an adverse effect on those values" where the values are: to protect and enhance the natural environment for recreational purposes; and to protect, manage and restore public land that is of ecological, scientific, cultural or aesthetic value. Under WDCP control E7, the objectives are to "protect and preserve bushland adjoining parks, bushland reserves and other public open spaces"; to "ensure that development responds to its adjacent surroundings to preserve and enhance the natural qualities of the environment"; and that "Development on land adjoining open space is to complement the landscape character and public use and enjoyment of the adjoining parks, bushland reserves and other public open spaces".</p> <p>On review of the updated Landscape Plan, existing trees and vegetation are nominated for retention in association with the existing natural sandstone outcrops, and additional planting is proposed that is subject to conditions from Landscape Referral, such that the proposed development is able to maintain a natural landscape transition to the adjoining Reserve, and as such Parks, Reserves and Foreshores raise no concerns with the development proposal.</p>
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	This application has been referred as it is in the vicinity of a local heritage item, being Item I121 - House known as "San Marino" 49 Greycliffe Street, Queenscliff , listed in Schedule 5 of <i>WLEP</i> 2011.
	Details of heritage items affected
	<p>Details of this heritage item in the vicinity, as contained within the heritage inventory, are:</p> <p>Item I121 - House known as "San Marino" 49 Greycliffe Street,</p>

Internal Referral Body	Comments		
	Queenscliff <u>Statement of Significance</u> A locally rare & representative example of an inter-war building in the mediterranean style. Historically shows the variety of architectural styles constructed in the inter-war years. <u>Physical Description</u> Two storey building with garage under & one projecting hipped roof garage. Stuccoed masonry walls with hipped tiled roof. Decorative treatment of wall elements. Recessed entrance with canopy capped with curved terracotta tiles.		
	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		
	<p>This application proposes alterations and additions to the existing 2-3 storey building which contains 2 dwellings. Works include alterations to the two dwellings, addition of an extra level on top, as well as a new garage, shared lift and access stairs, swimming pool, spa and landscaping.</p> <p>The heritage item in the vicinity is the house known as "San Marino" located on the opposite (northern) side of Greycliffe Street. Given the separation of the road and the change in level (the subject site slopes down towards Manly Lagoon), it is considered that the proposal will not have an adverse impact upon the heritage significance of 49 Greycliffe Street.</p> <p>The existing building is a brick P&O style building likely to date from the Inter War period. The building is visible on the 1943 aerial photos. While not heritage listed, it is a relatively intact example of the type of development occurring in Queenscliff in the 1930's. For that reason, it is considered that a simple photographic heritage record should be made of the building before the issue of a construction certificate.</p> <p>Therefore, no objections are raised on heritage grounds, subject to imposition of a condition requiring a simple photographic heritage record.</p>		

Internal Referral Body	Comments
	<p>Further Comments</p> <p><u>Consider against the provisions of CL5.10 of WLEP 2011</u></p> <p>Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? N/A</p> <p>Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? N/A</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p><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.</p>
Aboriginal Heritage Office	<p><i>Supported, subject to conditions.</i></p> <p>There are known Aboriginal sites in the area although no sites are recorded in the current lot and the area has been subject to previous disturbance reducing the likelihood of unrecorded Aboriginal sites.</p> <p>If areas of in situ sandstone outcrop are in the proposed development area (such as overhangs over 1.0m in height or level platforms over 2.0m square), the Aboriginal Heritage Office would recommend a preliminary inspection ('due diligence' under the <i>National Parks and Wildlife Act 1974</i>) by a qualified Aboriginal heritage professional prior to any development. If there are no existing sandstone outcrops present (or if any outcrops that were present were properly excluded from future impacts), then no further assessment is required and the Aboriginal Heritage Office would not foresee any further Aboriginal heritage constraints on the proposal.</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. A486093_02 dated 10 August 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 5.0 metres of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment

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

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

Comment

The subject site adjoins Manly Lagoon and is identified as waterways and riparian land. To ensure that the biophysical, hydrological and ecological environment is protected, Council's Riparian Lands Officer has recommended of consent including appropriate sediment and erosion controls. Council's Coastal, Biodiversity, Landscape Officers and the Aboriginal Heritage Office have included conditions of consent to ensure that no adverse impacts occur to the Coastal Environment Area.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

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

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

Comment

Recommended conditions are included to ensure the protection of the environment and to mitigate any adverse impacts. Council's Coastal Engineer has reviewed the proposal and is in support. Therefore, it is considered that the impacts to the foreshore or waterway areas and will not detract from the scenic quality of the locality, maintaining an appropriate visual relationship with the surrounding built environment.

Division 5 General

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

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

Comment

It is considered that the proposed development has been adequately designed, subject to recommended conditions to respond to the environmental constraints of the site, such that it can be stated that the proposed development is not likely to cause increased risk of coastal hazards within the locality.

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

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

Comment

Council's Coastal Officer has reviewed the proposal. It is considered that the relevant provisions of any certified coastal management program (if applies) to the land has occurred.

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

Chapter 4 – Remediation of Land

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

Warringah Local Environmental Plan 2011

Is the development permissible?	Yes
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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	Balconies (Rear): 12.02m Building: 9.7m	41.0% 14.4%	No (Refer to Clause 4.6)

Compliance Assessment

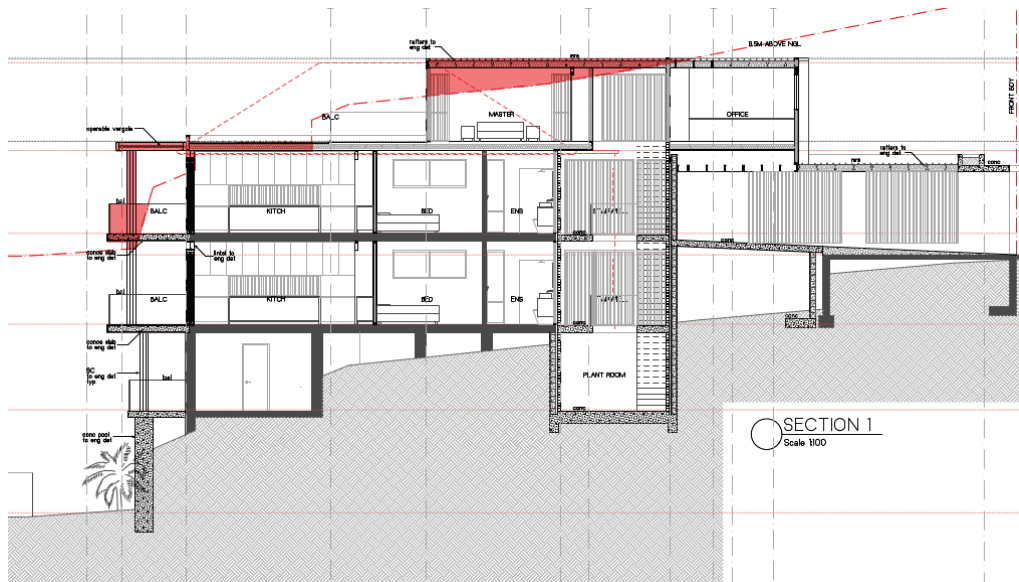
Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
5.3 Development near zone boundaries	Yes
5.21 Flood planning	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

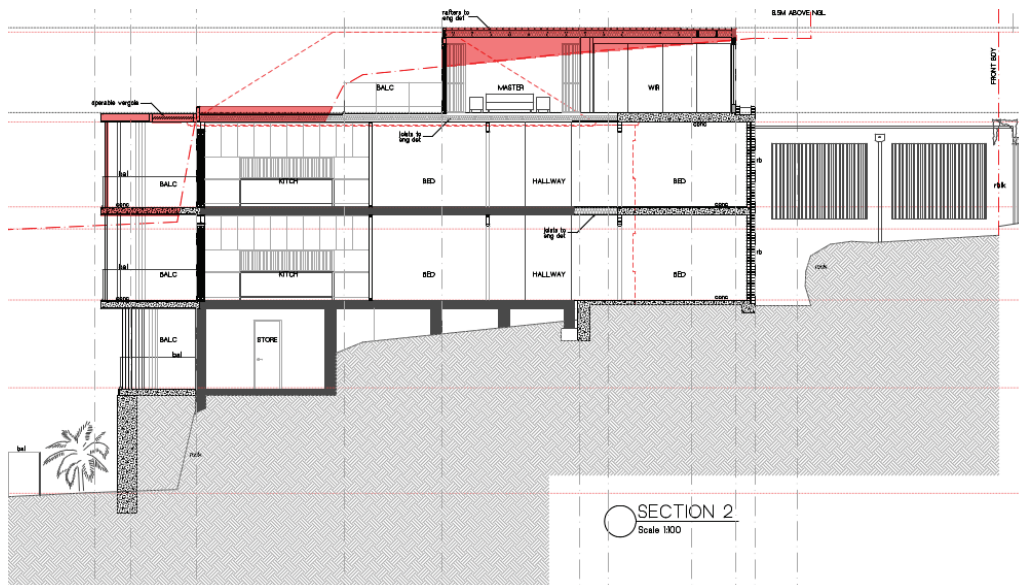
4.6 Exceptions to development standards

Description of Non-Compliance

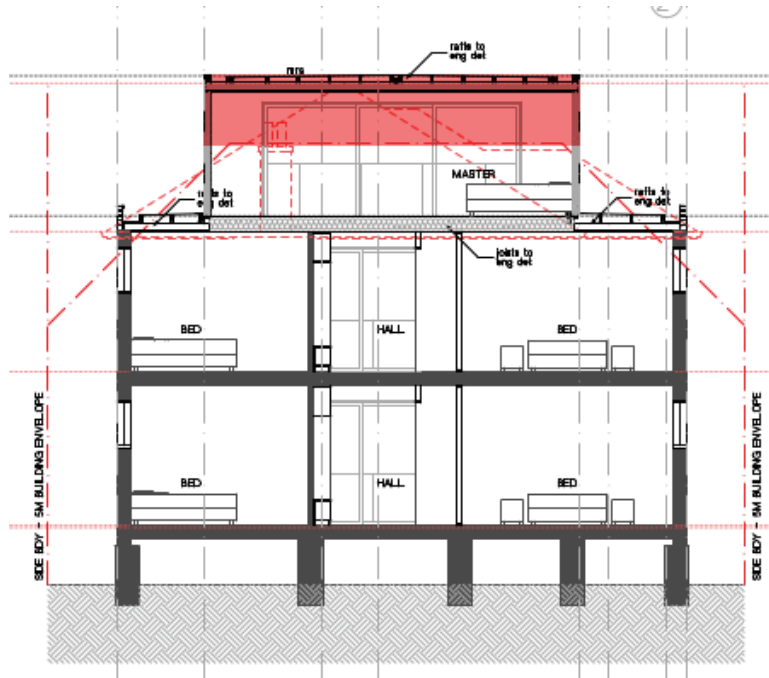
Development standard	Height of buildings
Requirement	8.5m
Proposed	Building: 9.7m Rear Balconies: 12.02m
Percentage variation to requirement	Building: 14.0% Rear Balconies: 41.4%



(Figure 1: Section 1 - Encroachment shown in red).



(Figure 2: Section 2 - Encroachment shown in red).



(Figure 3: Section 4- Encroachment shown in red).

Assessment of request to vary a development standard

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

Clause 4.6 Exceptions to development standards

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

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

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

Comment

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment

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

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

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

Comment

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act (cf previous s 5)

The objects of this Act are as follows:

(a) to promote the social and economic welfare of the community and a better environment by the

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

The applicants written request argues, in part:

- **"Topography:** The topography of the site falls from the north down towards the south, with the maximum height breach occurring where the natural ground falls away quite significantly, with a sheer drop of 3.0m at the southern façade of the existing building. The maximum height exceedance occurs where the proposed Unit 2 lower deck extends over this drop.
- **Characterisation of development:** The proposed development is appropriately characterised as alterations and additions to the existing residential flat building (that benefits from existing use rights), with the maximum height breach occurring as a consequence of the desire to provide private open space adjacent to the internal living areas of the existing dwellings, the floor levels of which are already established.

The breach associated with the proposed new upper floor is exacerbated by the elevated nature of the ground floor that is raised above ground level. Nonetheless, the upper floor is limited to three storeys in height, consistent with the scale of neighbouring and nearby development.

The proposed upper ridgeline of the development remains generally the same as the existing ridgeline, with a reduction in height and massing at the rear of the building arising as a consequence of the proposed demolition of the existing roof form (Figure 4).

- **Contextual response:** There is a strong precedence of three storey development and/or exceedance of the 8.5m height limit in the vicinity of the site. The proposed development has a two storey presentation to Greycliffe Street, with no more than 3 storeys in any one place presenting to the reserve to the rear. The maximum RL (24.70m AHD) of the proposed new upper floor is generally consistent with the existing ridgeline of the building (24.58m AHD) and is not incompatible with the ridgeline of adjoining dwellings, being 23.25m AHD at 52 Greycliffe Street and 25.07m AHD at 50 Greycliffe Street. Furthermore, the presentation of the development in storeys and the maximum height of the development is not dissimilar to previous approvals of Council...44 Greycliffe Street, Queenscliff...50 Greycliffe Street, Queenscliff...26 Greycliffe Street, Queenscliff.
- **Improved amenity:** The breach associated with the rear balconies arises from the provision of usable private open space for each dwelling. The proposed balconies are designed to be directly accessible from the internal living area, to function as an extension of the internal habitable area.

The provision of such areas of private open space is prescribed by the provisions of WDCP 2011 and the ADG and forms a critical component of contemporary housing on the Northern Beaches."



Figure 3: Extract of Section 2 with existing roof form above the height plane to be demolished shown in red.

(Figure 4: Extract from Clause 4.6 Variation Request - Red showing existing roof form, bulk and height non-compliance).

The sufficient environmental planning grounds that are advanced by the applicant are generally agreed with. This is due primarily to the built form of the proposed development being of a scope and form that is consistent with that of the adjoining buildings. The immediate area contains a number of buildings that have been either built or adapted as dual occupancies or residential flat buildings which vary in height between 2 and 4 storeys. It is considered that in the circumstance, the LEP's maximum building height is associated with that of a typical 2 storey dwelling, whereas the existing built form of the surrounding buildings is representative of medium density development where a higher building height would be expected.

Notwithstanding this, the site is steeply sloped from north to south, with a sheer drop of approximately 3.0 metres towards the rear of the existing building. As the rear balconies which breach the height limit are located within the area of steepest slope on the subject site and are integrated with the existing floor levels of the building it is not unexpected that a height breach occurs. It is important to recognise that the building element causing the breach will provide for improved articulation and visual interest when compared to the existing building facade, as the balconies are lightweight and open in design. In addition, these balconies will provide for a private open space area to each unit, where they currently have very limited private open space areas.

The upper floor addition which results in a separate building height breach is located above the existing floor levels below. The majority of the mass is located towards the street where it appears as a 2 storey building. The position of the mass in this location is considered to minimise the extent of breach and provides for a 'stepping down' design, to respond to the site steep topography. As the applicant argues (and it is accepted), it is evident that a precedence of three (3) to four (4) storey buildings occur in the area, given the sloping topography of the site. In addition a range of building typology exists of various height (in exceedance of 8.5 metres) and bulk, which is not dissimilar to that of the proposed works to the dual occupancy.

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

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

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

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

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

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

Comment

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

Objectives of development standard

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

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

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

Comment

Surrounding land uses include dwelling houses, dual occupancies and residential flat buildings (definitions as stated within the *Warringah Local Environmental Plan 2011*). The surrounding locality (Queenscliff) and the immediate vicinity include development of similar height, bulk and scale and several of even greater height, scale and density. The buildings along the southern side of Greycliffe Street, present large facades with open balconies and terraces when viewed from Manly Lagoon or nearby reserves.

The maximum RL (24.70m AHD) of the proposed upper floor will result in a slight increase yet is still considered generally consistent with the ridgeline of the existing building (24.58m AHD). Several properties include similar ridgelines, these being 23.25m AHD at 52 Greycliffe Street and 25.07m AHD at 50 Greycliffe Street, which too, present as three (3) or four (4) storey buildings.

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

Comment

Amended plans were received during the course of the assessment which reduced the width of the rear balconies, an element contributing to potential view loss. A view loss study was submitted by the applicant, which was taken into consideration within the view loss analysis elsewhere within this report (refer to 'Clause D7 Views' . Privacy and solar access was assessed and found to be acceptable on merit (refer to 'Clause D6 Access to Sunlight and D8 Privacy'). The proposal 'as amended' included changes to the upper floor addition, to shift the mass of the non-compliance towards the street, resulting in more of a 'step down and articulated design. The rear balconies although non-compliant, will aid in softening and will provide articulation and visual interest to the building, when compared to the existing blank brick facade.

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

Comment

The proposed additions are articulated and have been designed to integrate with the built form of the existing building. The proposed works are not considered visually offensive and is consistent with many other buildings which includes both rear balconies and top floors/roofs that exceed the building height standard of 8.5 metres. The rock outcrops at the rear of the property and majority of trees will remain, with further plantings to be proposed, which will contribute to the scenic quality of Warringah's coastal and bush environments.

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

Comment

As previously mentioned throughout the report, the proposed works will result in a three (3) storey building, with a lower level for laundry/storage/plant room. It is considered that the building may appear as a three (3) or four (4) storey building in some instances when viewed from adjoining properties or the Manly Lagoon and associated reserves. However, this is not considered inconsistent with the surrounding area. Several properties in the immediate vicinity (No. 50 and 52) can be perceived as three (3) or four (4) storey buildings, when viewed from similar areas. In addition, Queenscliff includes multiple residential flat buildings of a greater scale, height and density which are considered more visually dominant.

When viewed from the street, the development will be more likely perceived as a two (2) storey development, particularly due to the design of the build and sloping topography of the land. It can be considered that the development located on the higher side of the street (North) give arise to more visual dominance than that of the lower side (south), where the subject site is located.

Zone objectives

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

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

Comment

Although the proposal relies on existing use rights for a dual occupancy, the building and land use is consistent with surrounding properties. As the dual occupancy use will remain, the

building will continue to provide for housing needs within a low density residential environment.

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

Comment

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

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

Comment

The proposal presents a near compliant landscaped open space area. The topographical features including dense vegetation and rock outcrops located to the rear of the site close to Aitken Reserve will be maintained and will continue to provide for a landscaped transition between residential to adjoining public open space. Councils' Landscape Officer has included conditions for native tree canopy planting and for landscape works to be implemented in accordance with the submitted Landscape Plan.

Conclusion

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

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

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

Planning Circular PS20-002 dated 5 May 2020, as 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 Local Planning Panel.

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. Council's Development Engineer has reviewed the proposal and is in support, subject to recommended conditions.

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

Comment

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

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

Comment

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

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

Comment

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

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

Comment

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

(f) the likelihood of disturbing relics

Comment

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

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

Comment

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

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

6.4 Development on sloping land

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

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

Comment

The applicant has submitted a Geotechnical Assessment Report prepared by AscentGeo Geotechnical Consulting dated 28 November 2022. This report concludes that the proposed development is acceptable from a geotechnical perspective and therefore, it is satisfied that the development has been assessed for the risk associated with landslides in relation to both property and life. Conditions have been recommended to ensure that the development incorporates the recommendations within this report.

(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 AscentGeo Geotechnical Consulting dated 28 November 2022. 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 recommended conditions. Therefore, it 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

As above, the application has been assessed by Council's Development Engineers in relation to stormwater. The Engineers have raised no objections to approval, subject to recommended conditions. Therefore, it 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	East: 10.4m West: 9.7m	44.4% 34.7%	No
B3 Side Boundary Envelope	5.0m Western Elevation	Outside Envelope	-	No
	5.0m Eastern Elevation	Outside Envelope	-	No
B5 Side Boundary Setbacks	0.9m Western	Plant room: 1.4m Unit 1: 1.1m	-	Yes

	Boundary	Unit 2 (lower level): 1.1m Unit 2 (upper level): 2.6m - 3.2m Swimming Pool: 3.5m		
	0.9m Eastern Boundary	Plant room: 4.9m Unit 1: 1.4m Unit 2 (lower level): 1.4m Unit 2 (upper level): 3.0m Swimming Pool: 1.6m	-	Yes
B7 Front Boundary Setbacks	6.5m Northern Boundary	Garage: 0.2m Building: > 6.5m	96.9% -	No Yes
B9 Rear Boundary Setbacks	6.0m Southern Boundary	All works: > 6.0m*	-	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40.0% (239.04m ²)	38.0%** (226.9m ²)	5.0% (12.14m ²)	No

* Rear access stairs from lawn area/pool area to Aitken Reserve is deleted via a recommended condition due to a lack of information. Therefore, no further assessment will be provided in relation to this non-conforming element.

** Landscaped Open Space based off the deletion of the rear access stairs from lawn area/pool area to Aitken Reserve.

Compliance Assessment

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

Clause	Compliance with Requirements	Consistency Aims/Objectives
D2 Private Open Space	No	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	No	Yes
D7 Views	Yes	Yes
D8 Privacy	No	Yes
D9 Building Bulk	No	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D16 Swimming Pools and Spa Pools	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E8 Waterways and Riparian Lands	Yes	Yes
E10 Landslip Risk	Yes	Yes
E11 Flood Prone Land	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of Non-Compliance

Clause B1 states that wall heights are not to exceed 7.2 metres, when measured from ground level (existing) to the underside of the ceiling on the uppermost floor of the building.

The proposed building exhibits a non-compliant wall height of 10.4 metres to the eastern elevation and 9.7 metres to the west (maximum). The extent of breach occurs where the ground line falls away towards the rear of the building, with a steep drop of approximately 3.0 metres. It is noted that the existing building is non-compliant with the numerical requirements of this control.

Merit Consideration

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

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

Comment

It is considered that the building may appear as a three (3) or four (4) storey building in some instances when viewed from adjoining properties or the Manly Lagoon and associated reserves. However, this is not considered inconsistent with the surrounding area. Majority of properties present a three (3) storey design, with several properties in the immediate vicinity (No. 50 and 52) perceived to have a similar number of storeys as the proposal. In addition, Queenscliff includes multiple residential flat buildings of a greater scale, height and density which are considered more visually predominant.

The addition of the rear balconies will add visual interest and articulation to the build given the lightweight and open design, when in comparison to the existing brick blank façade. When viewed from the street, the development will be more likely perceived as a two (2) storey development, particularly due to the design of the build and sloping topography of the land

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

Comment

Due to the steep topography of the subject site and placement of canopy trees, the proposed development is likely to be sited below tree canopy height of the surrounding area.

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

Comment

The wall height encroachment of the building is not considered to result in unacceptable view loss to the neighbouring properties or public domain. Refer to 'Clause D7 Views' for further detail elsewhere within this report.

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

Comment

The building overall maintains an acceptable building separation, compliant with the side building setback requirements. In terms of amenity, privacy and solar access have been addressed in further detail elsewhere in the report under 'Clause D6 Access to Sunlight and D8 Privacy'.

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

Comment

Amended plans have been received that reduced the floor space of the upper floor, with the mass located towards the street to respond to the sloping topography of the site. The extensions to the existing floor levels follow the existing building line of the dual occupancy. Excavation for the plant room and lift area will be located underneath the building and wont be in view.

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

Comment

The proposed flat roof is contemporary in design, to a height similar to that of the existing roof ridge line. Queenscliff consists of varied roof designs, as the locality includes a diversity in building typology.

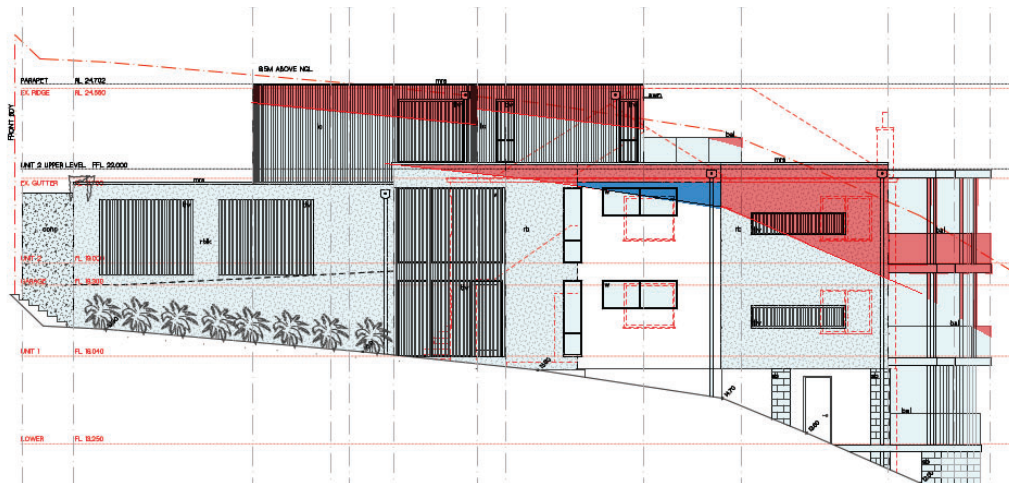
Having regard to the above assessment, it is concluded that the outcomes of the clause have been achieved. Therefore, the application is supported on merit in this particular circumstance.

B3 Side Boundary Envelope

Description of Non-Compliance

Clause B3 Side Boundary Envelope requires development to be sited within a 5.0 metre building envelope.

The proposed new building works encroaches the side building envelope on both the eastern and western elevations, shown in red in the figures below. Blue designates existing building non compliance.



(Figure 4 - Western Side Boundary Envelope Breach).



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

Comment

The proposed works comply with the side setback requirements of the WDCP 2011, with the upper floor addition setback progressively to provide for articulation and to reduce amenity impacts. Solar access and privacy are discussed elsewhere within the report under 'Clause D6 Access to Sunlight and D8 Privacy'.

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

Comment

Excavation is required to facilitate the works for the swimming pool and plantroom/storage. The excavation for the plantroom/storage will be located underneath the building envelope of the development and will not be easily viewed. The mass of the upper floor addition is setback from the rear and located towards the street to respond to the sloping topography, providing a 'stepping down' design.

Having regard to the above assessment, it is concluded that the outcomes of the clause have been achieved. Therefore, the application is supported on merit in this particular circumstance.

B7 Front Boundary SetbacksDescription of Non-Compliance

Clause B7 Front Boundary Setbacks prescribes a front boundary setback requirement of 6.5 metres for all built structures, other than driveways and fencing.

The proposal includes a three (3) car garage with a front setback of 0.2 metres from the front northern boundary line. All other works are compliant with the numerical requirements of this clause.

Although the subject site benefits from existing use rights, consideration of this clause is required as it applies to all land located on the 'DCP Map Front Boundary Setback'.

Merit Consideration

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

- ***To create a sense of openness.***

Comment

The subject site will maintain an acceptable sense of openness by providing a landscaped courtyard to the east of the garage within the front setback area. The dimensions and placement of the courtyard is consistent with surrounding properties within the street.

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

Comment

As mentioned above, the proposal provides a landscaped courtyard consistent with surrounding properties. The proposed garage is consistent with the visual continuity by way of location and setbacks, within the immediate vicinity, in particular along the southern side of

Greycliffe Street. Due to the steep slope of the subject site and positioning of the existing building, the proposal is considered acceptable in relation to the spatial characteristics.

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

Comment

As mentioned above, due to the topography of the land of the immediate area and the Queenscliff Locality, majority of properties consist of garage elements that encroach within the front boundary setback area or close to the front boundary line. Hence, the proposed development is in keeping with the existing streetscape character.

- ***To achieve reasonable view sharing.***

Comment

The front setback encroachment is not considered to result in unacceptable view loss from the surrounding private properties. Refer to 'Clause D7 Views' for further detail elsewhere within this report.

Having regard to the above assessment, it is concluded that the outcomes of the clause have been achieved. Therefore, the application is supported on merit in this particular circumstance.

C3 Parking Facilities

Merit Consideration

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

- ***To provide adequate off street carparking.***

Comment

The development provides the following on-site car parking:

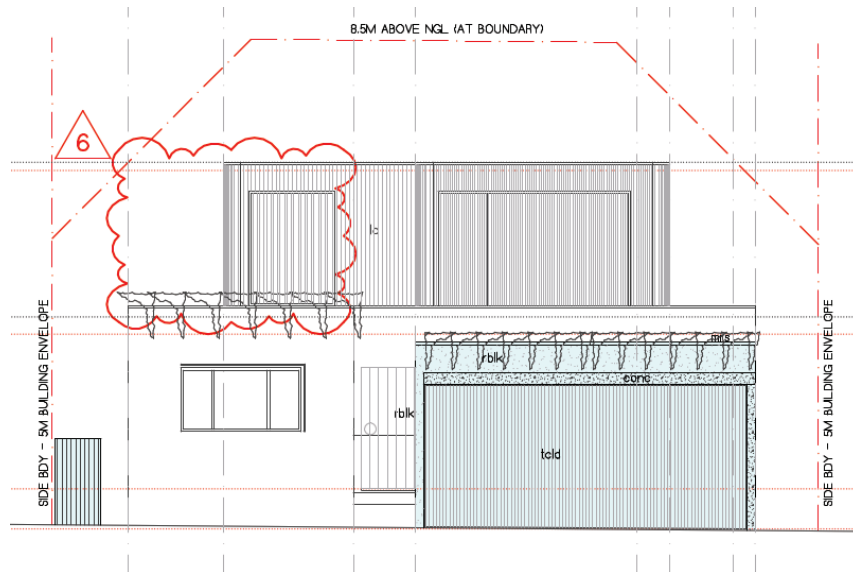
Use	Appendix 1 Calculation	Required	Provided	Difference (+/-)
Dual Occupancy	2 spaces per dwelling	Total of 4 spaces	1.5 spaces per dwelling (Total of 3 spaces)	Total of 1 space

The proposal provides a non-compliant number of parking spaces, with a variation of one (1) whole carparking space. Despite the shortfall in the required number of parking spaces, the proposal does include one (1) additional car parking space than that of the existing arrangement, which, was an open hardstand for two (2) spaces. Given, that the land use (dual occupancy) of the building will change under this application, the provided carparking spaces is considered acceptable.

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

Comment

The garage opening does not exceed 6.0 metres nor 50.0% of the building width as required, and has been designed to complement the overall building design. The garage has been designed to allow for an additional carparking space in a tandem arrangement without the need for significant excavation or demolition of the existing building. The garage has included timber battens and planter boxes to provide visual interest when viewed from the street frontage or public place. As shown in figure 6, the garage will be perceived as being incorporated within the overall design.



(Figure 6: North Elevation - Boundary or street view).

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

Comment

As discussed above, the garage has been designed to complement the overall build, with the development being viewed as a two storey dwelling from the street. Given the nature of Greycliffe Street and the sloping topography of the area there is extremely limited parking available. Almost all properties along the street and in the vast area consist of parking structures within the front setback area. The location of the parking area is not considered out of character.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of this clause. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D1 Landscaped Open Space and Bushland Setting

Description of Non-Compliance

Clause D1 Landscape Open Space and Bushland Setting requires a minimum of 40.0% of the subject site to be landscaped open space, which equates to 239.04m². Any open space areas with a dimension of less than 2.0 metres are excluded from this calculation (in exception of swimming pools and rock outcrops).

The proposal will result in a landscape open space area of approximately 215.1m² or 36.0%, with a variation of 10.0% to the numerical requirements of this clause.

A Landscape Plan was submitted, which has been prepared by Venation Landscapes dated 4 August 2023.

Merit Consideration

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

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

Comment

The front setback to the eastern portion of the site will consist of a landscaped lawn area and screen planting (i.e. Lilly Pilly). The screen planting upon maturity will aid in visual softening and the enhancement of the streetscape. Although, not incorporated within the landscape calculation, lightweight planter boxes will be included above the garage and part of the building to provide visual interest.

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

Comment

Council's Landscape, Biodiversity and the Aboriginal Heritage Office have reviewed the proposal and included conditions to ensure that unacceptable impacts do not occur to any indigenous vegetation, topographical features or habitat for wildlife.

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

Comment

The submitted Landscape Plan includes vegetation such as screen planting, shrubbery and ground covers. Council's Landscape Officer has included a recommended condition of two (2) native canopy trees to be planted on site, with Council's Biodiversity Team including a recommended condition for new landscaping to incorporate a minimum 60.0% of locally native vegetation species as a proportion of the total number of plants. Subject to conditions, this objective can be achieved, with the new plants to aid in the mitigation of bulk and scale.

- ***To enhance privacy between buildings.***

Comment

The proposed landscaping includes vegetation screening on site, however privacy will be further addressed under 'Clause D8 Privacy', elsewhere in this report.

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

Comment

Notwithstanding the non-compliance, it is likely that the subject site, particularly the rear open space area (lawn) can accommodate by way of dimensions and orientation for outdoor recreational activities, enhancing the amenity for the occupants.

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

Comment

The site will retain an adequate level of soft landscaped areas and impervious areas of appropriate proportions to accommodate service functions, including clothes drying.

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

Comment

The proposal has been reviewed by Council's Development Engineer, having regard to provisions for Stormwater management and has raised no objections subject to conditions included in the recommendation of this report. This is to ensure that any stormwater runoff does not result in unreasonable impacts to soil erosion and siltation of natural drainage channels.

Having regard to the above assessment, it is concluded that the outcomes of the clause have been achieved. Therefore, the application is supported on merit in this particular circumstance.

D2 Private Open Space

Description of Non-Compliance

Clause D2 Private open space requires dual occupancies with three (3) or more bedrooms to provide at least 60.0m² of private open space with minimum dimensions of 5 metres x 5 metres. The private open space is to be directly accessible from living areas and not located within the primary front building setback.

The existing arrangement did not satisfy Council's requirements, with each occupancy having minimal private open space, and a shared open space to the rear of the building. The proposal although provides a shortfall in the required dimensions and area of private open space, improves the existing arrangement.

Unit 1 consists of a rear balcony of approximately 29.0m² in area, with Unit 2 consisting of two (2) rear balconies with a combined area of approximately 52.0m² in area. It is noted that the floor space for unit 2 is larger and consists of more bedrooms than that of Unit 1. In addition, a common area to the rear of the building is provided, consisting of a rear deck, lawn area, existing garden and new swimming pool. This area is approximately 263.3m².

Merit Consideration

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

- ***To ensure that all residential development is provided with functional, well located areas of private open space.***

Comment

Each unit consists of a rear balcony directly associated with the primary living area, which is considered a functional and well located area for private open space. In addition, the site includes a rear yard for both units including a swimming pool. Although not directly located off the units living space, this rear yard can be accessed via the western side of the building.

- ***To ensure that private open space is integrated with, and directly accessible from, the living area of dwellings.***

Comment

As above, each unit consists of a balcony to the rear which is accessible from the primary living spaces. Although non-compliant with the numerical requirements, these balconies can be utilised as an extension of the internal living space for outdoor entertaining purposes.

- ***To minimise any adverse impact of private open space on adjoining buildings and their associated private open spaces.***

Comment

Refer to 'Clause D8 Privacy' for further detail regarding privacy impacts, elsewhere in this report. The privacy impacts are considered acceptable on merit.

- ***To ensure that private open space receives sufficient solar access and privacy.***

Comment

Solar access and privacy is assessed on a merit basis, and is addressed under 'Clause D6 Access to Sunlight' and 'Clause D8 Privacy', elsewhere in this report.

Notwithstanding the technical numerical non-compliance to this control, the proposed development achieves the underlying objectives of this control, as detailed above. The variation can be supported on its merits.

D6 Access to SunlightMerit Consideration

Clause D6 stipulates that at least 50.0% of the required area of private open space of each dwelling, and at least 50.0% of the required area of private open space of adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9.00am and 3.00pm on June 21.

Subject Site

The subject site as existing does not provide 50.0% of sunlight to the open space areas at 9.00am or 12.00pm. The existing building does not shadow 50.0% of the subject site's open space area at 3.00pm. The proposed works will provide additional shadow to the subject site's open space areas at 9.00am, 12.00pm and 3.00pm.

Adjoining Properties

The proposed works will shadow the front courtyard and eastern elevation of No. 56 Greycliffe Street at 9.00am. The proposed works will not result in additional shadow to this property at 12.00pm or 3.00pm, but rather the property will shadow the subject site. It is noted that the private open space to this property is not the front courtyard but would be the rear yard and balconies due to being associated with the living areas of the dwelling which is orientated towards water views.

The proposed works will shadow the western elevation and part of the rear private open space area (however will not cover 50.0% of the open space area) of No. 52 Greycliffe Street at 12.00pm, and will shadow majority of the private open space area at 3.00pm. The proposed works will not impact this property at 9.00am, but rather this property will shadow the subject site.

Given the sloping topography, orientation (north-south) and size and scale of all buildings along Greycliffe Street, no property will benefit from complete solar access between the required times of 9.00am - 3.00pm June 21, but are rather vulnerable to overshadowing. It must also be recognised that the affected and subject sites have been designed so as to take advantage of the available water views and not to maximise solar access.

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

- ***To ensure that reasonable access to sunlight is maintained.***

Comment

Strict compliance to this control is not possible given the nature of the land (sloped topography), the height and scale of all buildings in the area and the north to south orientation of these buildings. The properties to this area are subject to overshadowing. The proposed development will not impact 50.0% of neighbouring main open space areas between the hours of 9.00am - 3.00pm June 21st. It is demonstrated on the submitted shadow diagrams that majority of the additional overshadowing to the main private open space areas will occur to areas that are already likely in shadow. Therefore, the development will maintain reasonable access to sunlight.

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

Comment

The proposed development is considered acceptable in relation to the context of the area which has been discussed throughout the report. It is noted that the proposed development will not impact 50.0% of neighbouring main open space areas between the hours of 9.00am - 3.00pm June 21st. The greatest impact will be to the subject site itself. Although, non-compliant in regards to solar access the subject site will provide for private open space areas to both units, compared to the existing building. The design of the building is consistent with surrounding and will commensurate with the more recent/modern style buildings in the area. Therefore, given the vulnerability of the sites (subject to overshadowing), the proposal has provided a reasonable innovative design that will not result in unacceptable solar impacts.

- ***To promote passive solar design and the use of solar energy.***

Comment

Concern was raised in relation to overshadowing impact to No. 52 Greycliffe Street's solar panels. The proposed shadow diagrams demonstrate that overshadowing is not likely to occur to the roof of this property, particularly at 9.00am - 12.00pm June 21st. It is also noted that the proposed works will not impact the roof of No. 52 Greycliffe Street between 12.00pm - 3.00pm June 21st. Therefore, no unacceptable impacts to passive solar design and the use of solar energy will occur.

Having regard to the above assessment, it is concluded that the applicable outcomes of the control have been achieved. Therefore, the application is supported on merit.

D7 Views

Merit Consideration

Two (2) submissions were received from the following properties which included concerns regarding view loss:

- No. 50 Greycliffe Street, Queenscliff.
- No. 56 Greycliffe Street, Queenscliff.

A site inspection was conducted at each property and the photos taken from the inspection will be referenced in this assessment.

Note: No. 54 Greycliffe Street, Queenscliff will be referenced as 'subject site' under this view loss assessment.

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

- ***To allow for the reasonable sharing of views.***

Comment

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

1. Nature of the views affected

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

Comment to Principle 1

The nature of the views affected will be discussed below for each property:

No. 50 Greycliffe Street: The views of concern obtained by this site is achieved towards the south and south-west. The views consist of Manly Lagoon and associated reserves. Additional views towards the south-east consist of Queenscliff beach and ocean views.

No. 56 Greycliffe Street: The views of concern obtained by this site is achieved towards the south-east over the subject site and various other properties. The view consists of a partial and distant view of the ocean towards Queenscliff Beach, this view is heavily obstructed by existing buildings and vegetation. Additional views towards the south and southwest consist of Manly Lagoon and associated reserves.

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

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

Comment to Principle 2

The location of the obtained views will be discussed below for each property:

No. 50 Greycliffe Street: The views mentioned above are located from both the upper and lower floor living areas, bedrooms and balconies. The views are obtained primarily from a standing perspective, however, majority of the views can be obtained in a sitting position.

No. 56 Greycliffe Street: The view of the ocean is obtained from the balconies to the upper and lower levels. The views of the Lagoon and reserves are located from both the upper and lower floor living areas, bedrooms and balconies. The views are obtained primarily from a standing perspective, however, majority of the views can be obtained in a sitting position.



(Image 1: View from No. 50 Greycliffe Street - Lagoon view towards south-west)



(Image 2: View from No. 56 Greycliffe Street - Lagoon view towards south-west)



(Image 3: View from No. 56 Greycliffe Street - Distant and partial ocean view towards the

south-east from upper level)



(Image 4: View from No. 56 Greycliffe Street - Distant and partial ocean view towards the south-east from lower level)

3. Extent of impact

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

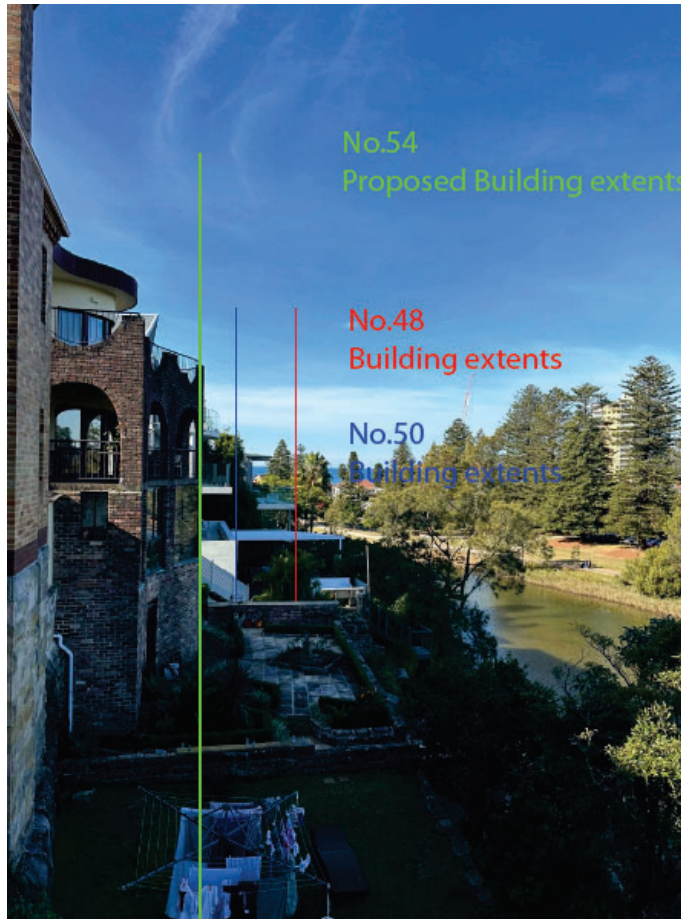
Comment to Principle 3

The extent of impact will be discussed below for each property:

No. 50 Greycliffe Street: All views currently obtained by this property are not considered to be disrupted by the proposed works at the subject site. Overall view loss is considered to be negligible.

No. 56 Greycliffe Street: The views of Manly Lagoon and associated reserves are not

considered to be impacted by the proposed works at the subject site. The ocean views of concern are likely to remain as existing and will not be detrimentally impacted, partially when standing at the southern portions of the deck. Minor view loss impact to this view may occur when standing at the northernmost point of the balcony. Overall view loss is considered to be minor.



(Figure 7: View Loss Study Extract - View from No. 56 Greycliffe Street upper level)

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4

As detailed elsewhere in this report, the proposed development relies upon existing use rights. The alterations and additions have been found to exhibit non-compliance to various built

form controls. Therefore, the numeric planning controls as stipulated in the WDCP 2011 and *WLEP 2011* do not strictly apply but have been considered and addressed. The alterations and additions have been found to exhibit non-compliance to the relevant built form controls including height, boundary envelope and front setbacks. The non-compliances were found to be acceptable, achieve consistency with the objectives of the control and have subsequently been supported. It is considered that a more compliant proposal would not necessarily provide more views or retain existing views. In this case, the proposals rear balconies were of concern to potentially cause view loss, although, non-compliant in height these balconies are well setback from the rear boundary, and were further reduced in width (by 500mm) to ensure that any impacts to views were mitigated. A view loss study submitted by the applicant (extract shown above) demonstrates that minimal impact (if any) will occur to No. 56 Greycliffe Street ocean views. In this instance, the minor view loss that may occur when standing at the northernmost part of the balconies may occur, but is considered reasonable given the views to be obtained.

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

Comment

Amended plans were received which reduced the width of the balconies by 500mm, to ensure that any impact to view loss was reduced. This amendment demonstrates adequate design solutions in an attempt to develop a proposal that incorporates modern and contemporary architecture that is responsive to the natural and urban environment of the vicinity.

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

Comment

Any trees to be removed on site will be replaced via a recommended condition by Council's Landscape Officer, ensuring vegetation has priority over views.

Having regard to the above assessment, it is concluded that the outcomes of the clause have been achieved. Therefore, the application is supported on merit.

D8 Privacy

Merit Consideration

Clause D8 Privacy requires building layout to be designed to optimise privacy for occupants of the development and occupants of adjoining properties, and limit overlooking. The windows of one dwelling are to be located so they do not provide direct or close views (i.e. from less than 9 metres away) into the windows of other dwellings.

- Windows - Western Elevation

Concern is raised in relation to the proposed windows (within 9.0 metres) along the western elevation, adjacent to the western adjoining neighbour No. 56 Greycliffe Street. The windows along this elevation are addressed in detail below:

- Majority of the windows consist of privacy screens to reduce direct overlooking, this is considered acceptable for the kitchen windows and the upper floor level of Unit 2.
- Bedroom 1 of both Unit 1 and 2 will be amended via a condition of consent to increase the sill height to 1.7m. Whilst it is considered that the proposed windows are in similar locations to that of existing and are associated with bedrooms, the number of windows to this elevation has

increased. Therefore, to provide a sense of security for No. 56 Greycliffe Street, even bedroom windows should provide privacy elements.

- The windows to the internal stairwell, although, provides privacy screens are quite large and are in close proximity to the neighbouring windows and courtyard at No. 56 Greycliffe Street. Therefore, a condition of consent will be recommended to also include frosted glazing in conjunction with the proposed timber screening.
- The windows to Bedroom 1 ensuite are modest in size. As these windows are associated with a bathroom it is likely that privacy elements such as frosted glazing or similar will be included.

Windows - Eastern Elevation

Concern is raised in relation to the proposed windows (within 9.0 metres) along the eastern elevation, adjacent to the eastern adjoining neighbour No. 52 Greycliffe Street. The windows along this elevation are addressed in detail below:

- All windows to the eastern elevation include timber privacy screening, in exception of the bedroom windows. As above the windows to Bedroom 3 will be amended via a condition of consent to increase the sill height to 1.7m.

Outdoor Open Space - Balconies and Swimming Pool

Concerns have been raised in regard to privacy impacts as a result of the proposed swimming pool and rear balconies. The properties within this area, particularly along the southern side of Greycliffe Street all include limited privacy to the rear due to the sensitive nature of the surrounding views obtained by many properties, and the inclusion of balconies and windows to the rear elevations, which are generally orientated towards the views to be obtained.

The rear balconies although in close proximity to the adjoining properties are reasonable in size and provide private open space to the subject site units. To add privacy screens to the edges of these balconies will not only reduce the views obtained by the subject site but can cause the potential of view loss to surrounding properties. It is evident by conducting various site and view loss inspections in the area that many properties look over other sites and through balconies to obtain view corridors. Therefore, to add a privacy elements such as privacy screens may likely result in loss of views to others.

The upper floor terrace to Unit 2 is centralised to the middle of the building and is not considered to significantly reduce any privacy levels to adjoining properties.

The swimming pool location similar to that of surrounding properties are subject to overlooking. This is due to the size of the buildings to this area which all include balconies and/or windows that are orientated towards the Manly Lagoon or Ocean Views. No privacy element would protect the privacy to this pool area. Therefore, as the pool is consistent with other property's pool locations and levels of privacy, the subject site's pool is considered acceptable.

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

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

Comment

Subject to the recommended conditions, the proposal will provide for an acceptable level of visual and acoustic privacy for the subject site and adjoining neighbours within a residential setting.

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

Comment

The proposed development combined with the recommended condition will result in a proposal that incorporates innovative design solutions to improve the urban environment.

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

Comment

The recommended condition of consent will ensure that a sense of security and protection is provided for both occupants of the subject site and visitors.

Having regard to the above assessment, it is concluded that the applicable outcomes of the control have been achieved. Therefore, the application is supported on merit.

D9 Building Bulk

Merit Consideration

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

- ***To encourage good design and innovative architecture to improve the urban environment.***
- ***To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.***

Comment

Firstly, it is important to note that the existing building provided minor articulation (if any) and appeared as a large brick building with a blank façade when viewed from adjoining properties and the public domain and, reserves and waterway (Manly Lagoon). The proposed additions being an extension to the existing unit 1 and unit 2 follow the existing line and spatial characteristics of the existing building which does exhibit minimal articulation. However, provides articulation in the form of light-weight and open balconies to the rear to soften the built form when viewed from the public domain, reserves and waterway. The upper floor addition progressively steps in with setbacks between 2.6 metres - 3.2 metres, further providing a sense of articulation to the build. Majority of the mass will be located towards the street and will be located under the building height standard of 8.5 metres (in exception of an encroachment to part of the upper floor and rear balconies).

The articulation of the balconies and upper floor addition combined with the use of various materials and finishes will enhance the visual quality of the site when viewed from the waterways, reserves and adjoining properties. As mentioned throughout the report, the design is consistent with various buildings located in Queenscliff and in the immediate vicinity of the site. The rear balconies and upper floor addition will complement the character of the area and is

considered to present conformity when viewing the lower side of Greycliffe Street as a whole.

Having regard to the above assessment, it is concluded that the objectives of the control are achieved. Therefore, the application is supported on merit in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$11,830 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,182,996.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

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

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

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

PLANNING CONCLUSION

This proposal, for the alterations and additions to a dual occupancy including a swimming pool has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to the proposal contravening Clause 4.3 Height of buildings under the *WLEP 2011* by more than 10.0% for a Class 2 building.

The development application was notified for fourteen (14) days, as stated within Council's Community Participation Plan, with five (5) submission received. The concerns raised in this submission have been addressed elsewhere within this report, and do not warrant refusal of the application. Two (2) sets of amended plans were received during the assessment process to address concerns raised, which resulted in additional comments from the initial objectors, the application history has been addressed elsewhere within this report.

The critical assessment issues relate primarily to existing use rights and the Clause 4.6 written request to vary the height of buildings. The proposed works were (although not strictly bound to) assessed against the built form and amenity controls under the *WDCP 2011*, which have been found to be acceptable on merit.

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

It is considered that the proposed development satisfies the relevant objectives and that all processes and assessments have been satisfactorily addressed. Accordingly, the application is referred to the NBLPP with a recommendation for **approval**, subject to recommended conditions.

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

RECOMMENDATION

That Northern Beaches Council as the consent authority permits a contravention of clause 4.3 Height of Building development standard pursuant to clause 4.6 of the 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 the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2023/0251 for Alterations and additions to a dual occupancy including a swimming pool on land at Lot 18 DP 8373, 54 Greycliffe Street, QUEENSCLIFF, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

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
DA-01	6	Site Plan + Analysis	Pittwater D
DA-02	6	Swimming Pool Plan	Pittwater D
DA-03	6	Unit 1 - Floor Plan	Pittwater D
DA-04	6	Unit 2 - Lower Level Plan	Pittwater D
DA-05	6	Unit 2 - Upper Level Plan	Pittwater D
DA-06	6	Roof Plan	Pittwater D
DA-07	6	North Elevations	Pittwater D
DA-08	6	South Elevation	Pittwater D
DA-09	6	East Elevation	Pittwater D
DA-10	6	West Elevation	Pittwater D
DA-11	6	Section 1	Pittwater D
DA-12	6	Section 2	Pittwater D
DA-13	6	Section 3	Pittwater D
DA-14	6	Sections	Pittwater D

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate (No. A486093_02)	-	Paul & David Consulting	10 August 2023
Arboricultural Impact Appraisal and Method Statement	-	Naturally Trees Arboricultural Consulting	8 December 2022
BCA Compliance Assessment (Ref. P220212)	-	BCA Vision Pty Ltd.	25 November 2022
Geotechnical Assessment (Ref. AG 22510)	-	AscentGeo Geotechnical Consulting	28 November 2022
Waste Management Plan	-	Pittwater Design + Draft	3 March 2023
Cassar Residence Landscape Plan (LC_01)	A	Venation Landscapes	4 August 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	11 April 2023

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

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

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 \$11,829.96 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 \$1,182,996.00.

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 (Drainage Works)**

The applicant is to lodge a bond of \$45,000.00 as security against any damage or failure to complete the construction of stormwater drainage works as part of this consent.

Details confirming payment of the bond 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. **Flooding**

In order to protect property and occupants from flood risk the following is required:

Building Components and Structural Soundness – B1

All new development below the Flood Planning Level of 3.61m AHD shall be designed and constructed as flood compatible buildings in accordance with Reducing Vulnerability of Buildings to Flood Damage: Guidance on Building in Flood Prone Areas, Hawkesbury-Nepean Floodplain Management Steering Committee (2006).

Building Components and Structural Soundness – B2

All new development must be designed to ensure structural integrity up to the Flood Planning Level of 3.61m AHD taking into account the forces of floodwater, wave action, flowing water with debris, buoyancy and immersion.

Building Components and Structural Soundness – B3

All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level. All existing electrical equipment and power points located below the Flood Planning Level must have residual current devices installed to cut electricity supply during flood events.

Fencing – F1

New fencing (including pool fencing, boundary fencing, balcony balustrades and accessway balustrades) shall be open to allow for the unimpeded movement of flood waters. It must be designed with a minimum of 50% open area from the natural ground level up to the 1% AEP flood level 3.11m AHD. Openings should be a minimum of 75mm x 75mm.

Storage of Goods – G1

Storage areas for hazardous or potentially polluting materials shall not be located below the Flood Planning Level of 3.61m AHD unless adequately protected from floodwaters in accordance with industry standards.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

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. **Traffic Management and Control Application**

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

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

11. **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 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 generally in accordance with the concept drainage plan prepared by Barrenjoey Consulting Engineers, Drawing No. 221101-SW1, Rev A, dated 3/08/2023.

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

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

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by ASCENTGEO, Ref No. AG 22510, dated 28/11/2022 are to be incorporated into the construction plans and documentation.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

13. **Vehicle Crossings Application**

The Applicant is to submit an application with Council for driveway levels to construct a vehicle crossing 5.85 metres wide at edge of road bitumen and 5.85 metres wide at boundary in accordance with Northern Beaches Council Standard Vehicle Crossing Profile - Normal (N) in accordance with Section 138 of the Roads Act 1993.

Note, driveways are to be in plain concrete only.

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

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

Reason: To facilitate suitable vehicular access to private property.

14. **Off Street Parking Design**

The Applicant shall submit a design for the parking facility in accordance with the relevant provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical Controls and Section 2.6 Design of Domestic Driveways.

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

Reason: Compliance with this consent.

15. **Structures Located Adjacent to Council Pipeline or Council Easement**

All structures are to be located clear of any Council pipeline or easement. Footings of any structure adjacent to an easement or pipeline are to be designed in accordance with Council's Water Management Policy; (in particular Section 6 - Building Over or Adjacent to Constructed Council Drainage Systems and Easements Technical Specification). Structural details prepared by a suitably qualified Structural Engineer, who has National Engineers Register (NER) or Professionals Australia (RPENG) demonstrating compliance are to be submitted to Council for acceptance. Council's written acceptance is to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

16. **Water Quality Management**

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

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

Reason: Protection of the receiving environment.

17. **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.

18. Stormwater Treatment Measures – Minor

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

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

Reason: Protection of the receiving environment.

19. Amendments to the approved plans

The following amendments are to be made to the approved plans:

a) Rear Access Stairs: The proposed external access stairs to the south-eastern portion of the site are to be deleted from the architectural plans, and do not form part of this consent. Any reference of these stairs are to be removed.

b) Eastern Elevation Windows - BED 3: The windows to "BED 3" on both Unit 1 and Unit 2 as shown on the approved plans, is to increase the sill height to 1.70 metres above the finished floor level.

c) Western Elevation Windows - BED 1: The windows to "BED 1" on both Unit 1 and Unit 2 as shown on the approved plans, is to increase the sill height to 1.70 metres above the finished floor level.

d) Western Elevation Windows - Internal Stairwell: The windows on the western elevation to the common internal stairwell as shown on the approved plans, are to include obscured glazing.

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.

20. 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.

21. **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 Compliance Assessment Report prepared by BCA Vision, dated 25/11/2022, Ref No. 220212, 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.

22. **Photographic Heritage Record**

A simple photographic heritage record of the site is to be made of all buildings and structures, as a record of the site prior to works.

This record must be submitted to Council's Heritage Advisor, prior to the issue of a construction certificate and commencement of any works on-site.

This photographic record should be made using digital technology and should include:

- Location of property, date of survey and author of survey;
- A site plan at a scale of 1:200 showing all structures and major landscape elements;
- Existing plans of any buildings (floor plans and elevations);
- Photographs of all elevations, interiors and key features (including gardens, fences, architectural details such as windows, joinery etc.) as well as a number of contextual shots depicting the sites surrounding environment.

All images should be cross-referenced to a catalogue sheet.

Reason: To provide an historical photographic record of the site, including any buildings and landscape elements, prior to any works.

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

The Applicant is to submit a pre-construction / demolition 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, 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 acceptance. Council's written acceptance must be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

24. **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.

25. **External Finishes to Roof**

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

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

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

26. **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.

27. **Construction Traffic Management Plan**

A Construction Traffic Management Plan (CTMP) and report shall be prepared by a Transport for NSW accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase.
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken.
- Make provision for all construction materials to be stored on site, at all times.

- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period.
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed.
- Where access is required across private property not in the direct ownership of the proponent, such as a private road/driveway, community title road or right of way, the CTMP is to include:
 - Evidence of the legal right and terms to use the access route or provide owners consent from the owners/strata/community association.
 - Demonstrate that direct access from a public space/road is not viable for each stage of works.
 - An assessment to be carried out of the physical constraints of the Right of Carriageway to determine the maximum size of vehicle that may access the site via the Right of Carriageway during construction.
 - Unless owner/strata/community associations consent is obtained, vehicles are not to exceed 24 tonnes or 7.5 metres in length (an assessment must be undertaken that the surface is capable of supporting up to 24 tonnes, otherwise the weight limit should be reduced in the CTMP). If consent is obtained, a copy must be included in the CTMP.
 - No construction vehicles, materials or plant are to be located or parked in the private road/driveway, community title road or right of way.
 - How any disruption to other users of the private road/driveway, community title road or right of way will be minimised and all users kept informed of likely disruption where the access will be closed or blocked for any given time.
 - If trees are located within or overhang the access route, a tree protection plan prepared by an Arborist with minimum AQF Level 5 in arboriculture demonstrating how any trees within the Right of Carriageway will be protected from damage by construction vehicles. Should any tree protection measures be required on private land in accordance with AS4970-2009 Protection of trees on development sites, owner's consent must be obtained.
 - A Dilapidation report, including photographic surveys, of the private road/driveway/right of way must be included prior to any works commencing on the site. The report must detail the physical condition of the private road/driveway/right of way, and any other adjacent private property assets (including trees) or adjacent public property that may be adversely affected by vehicles servicing the development site to undertake works or activity during site works.
 - A requirement for Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, to be submitted after the completion of works and prior to the Occupation certificate. The report must:
 - Compare the post-construction report with the pre-construction report,
 - Clearly identify any recent damage or change to the private road/driveway/right of way and whether or not it is likely to be the result of the development works,
 - Should any damage have occurred, identify remediation actions taken.
 - Be submitted to Council with the Occupation Certificate.
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site.

- Make provision for parking onsite. All Staff and Contractors are to use any basement parking once available.
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior.
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety.
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees.
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site.
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site.
- Specify that the public roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council.
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent.
- Proposed protection for Council and adjoining properties.
- The location and operation of any on site crane.

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

A copy of the approved CTMP must be kept on-site at all times while work is being carried out.

The development is to be undertaken in accordance with the Construction Traffic Management Plan approved by Northern Beaches Council Traffic Team.

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

28. **Waste Management Plan**

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

29. **Tree Removal Within the Property**

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

- a) tree 5 and tree 9 only,
- 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.

30. **Pre-Construction Dilapidation Report**

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

Property: No. 52 Greycliffe Street, Queenscliff.

Property: No. 56 Greycliffe Street, Queenscliff.

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifier and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifier must be satisfied that the requirements of this condition have been met prior to commencement of any works. If access is denied, then no dilapidation report is required.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage arising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the commencement of any works on site.

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

DURING BUILDING WORK

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

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

Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office contacted to assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, NSW Biodiversity and Conservation Division, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

Reason: Preservation of significant environmental features.

32. **Tree and Vegetation Protection**

a) Existing trees and vegetation shall be retained and protected as identified on the Landscape Plan, including:

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

The Principal Certifier must ensure that:

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

Reason: Tree and vegetation protection.

33. **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.

34. **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.

35. **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.

36. **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) 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.

37. **No Access Through Land Owned or Managed by Council**

Site access is not approved for delivery of materials nor construction of the development through adjacent land owned or managed by Council, without the written approval of Council.

Reason: Public safety, landscape amenity and tree protection.

38. **Storage of Materials on Land Owned or Managed by Council Prohibited**

The dumping or storage of building materials, spoil, vegetation, green waste or any other material in land owned or managed by Council is prohibited.

Reason: Public safety and environmental protection.

39. **Protection of Council's Public Assets**

Any damage to Council's public assets shall be made good by the applicant, and/or the contractor, to the satisfaction of Council.

Council's public assets include, but is not limited to, the following: road, kerb and gutters, crossovers, crossings, paths, grass verge, open space and associated elements such as furniture, recreational facilities and the like, within the meaning of the Local Government Act 1993. Existing trees shall be protected in accordance with AS4970-2009 Protection of Trees on Development Sites, with particular reference to Section 4, with no ground intrusion into the tree protection zone and no trunk, branch nor canopy disturbance.

Reason: To protect and/or restore any damaged public asset.

40. **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.

41. **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.

42. **Demolition Works - Asbestos**

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifier, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

43. 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.

44. Traffic Control During Road Works

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

Reason: Public Safety.

45. 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.

46. Aboriginal Heritage

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

If areas of in situ sandstone outcrop are in the proposed development area (such as overhangs over 1.0m in height or level platforms over 2.0m square), the Aboriginal Heritage Office would recommend a preliminary inspection ('due diligence' under the National Parks and Wildlife Act 1974) by a qualified Aboriginal heritage professional prior to any development. If there are no existing sandstone outcrops present (or if any outcrops that were present were properly excluded from future impacts), then no further assessment is required and the Aboriginal Heritage Office would not foresee any further Aboriginal heritage constraints on the proposal.

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.

47. Implementation of Construction Traffic Management Plan

All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate TfNSW accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

Reason: To ensure compliance of the developer/builder in adhering to the Construction Traffic Management procedures agreed and are held liable to the conditions of consent.

48. 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.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

49. Landscape Completion

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

- a) landscape works are to be contained within the legal property boundaries,
- b) two replacement trees shall be installed into the lower slopes of the property at a minimum pre-ordered planting size of 75 litres; selected from Northern Beaches Council's Native Plant Species Guide, or Council's Tree Guide; to achieve at least 6.0 metres height at maturity; planted into a prepared planting hole 1m x 1m x 600mm depth generally, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
- c) mass planting shall be installed at minimum 1metre intervals for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,
- d) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces,
- 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.

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.

50. **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.

51. **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 Curl Curl 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.

52. **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.

53. **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.

54. Stormwater Disposal

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a Civil Engineer who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG). 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.

55. Installation of Rainwater Tanks

Rainwater tanks shall comply with the following:

- a) Be fitted with a first-flush device that causes initial rainwater run-off to bypass the tank and must drain to a landscaped area. The first flush device will not be permitted to connect to the stormwater system
- b) Have a sign affixed to the tank stating the contents is rainwater
- c) Be constructed or installed in a manner that prevents mosquitoes breeding, such as the use of mesh to protect inlets and overflows
- d) Have its overflow connected to an existing stormwater drainage system that does not discharge to an adjoining property, or cause a nuisance to adjoining owners
- e) Pumping equipment must be housed in a soundproof enclosure
- f) Where the rainwater tank is interconnected to a reticulated water supply, it must be installed in accordance with Plumbing Code of Australia, particularly backflow/cross connection prevention requirements

A certificate from a licenced plumber shall be submitted to the Principal Certifier prior to the release of the Occupation Certificate.

Reason: To conserve potable water.

56. Post-Construction Dilapidation Report

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

- Compare the post-construction report with the pre-construction report,
- Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

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

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

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

All structures are to be located clear of any Council pipeline or easement. Footings of any structure adjacent to an easement or pipeline are to be designed in accordance with Council's

Water Management Policy; (in particular Section 6 - Building Over or Adjacent to Constructed Council Drainage Systems and Easements Technical Specification). Structural details prepared by a suitably qualified Structural Engineer demonstrating compliance are to be submitted to Council for acceptance. Council's written acceptance must be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: Protection of Council's infrastructure

58. **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.

59. **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**60. Landscape Maintenance**

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

The approved landscape planted areas consisting of lawn and planting 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.

61. Maintenance of Stormwater Treatment Measures - Minor

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

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.

62. Geotechnical Recommendations

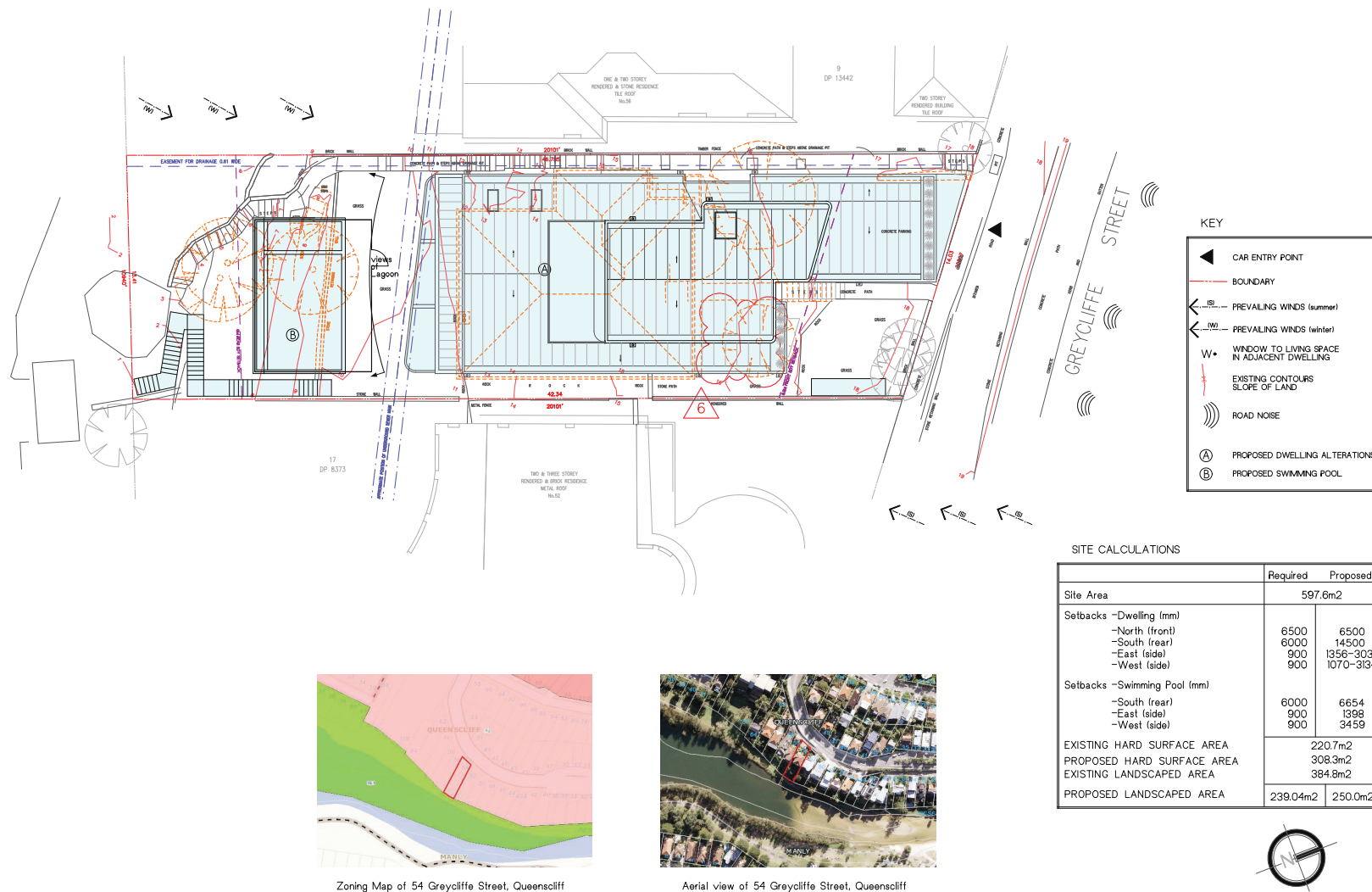
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

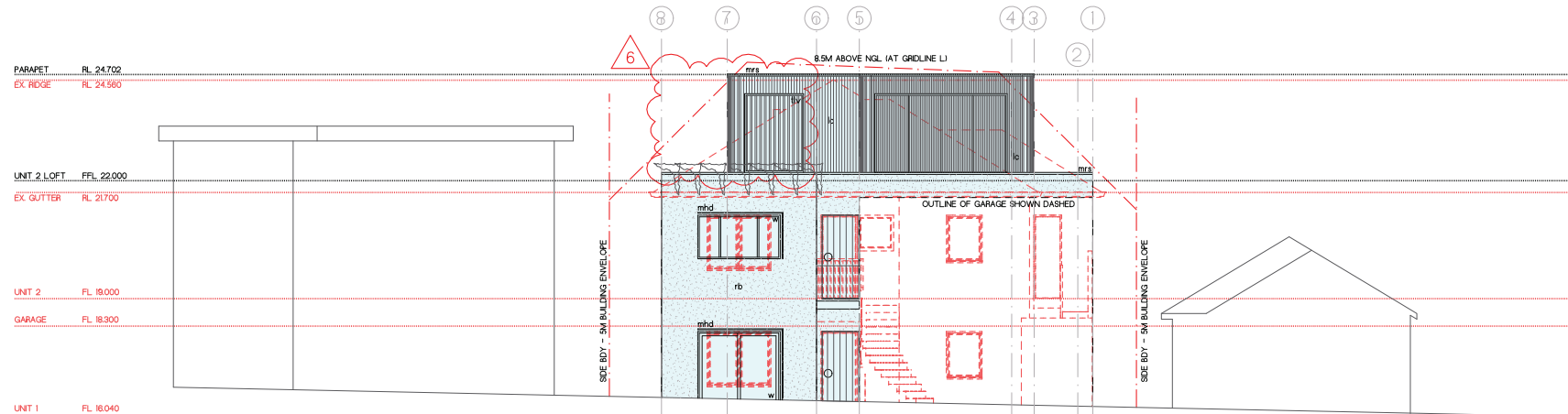
Reason: To ensure geotechnical risk is mitigated appropriately.

63. Swimming Pool/Spa Motor Noise

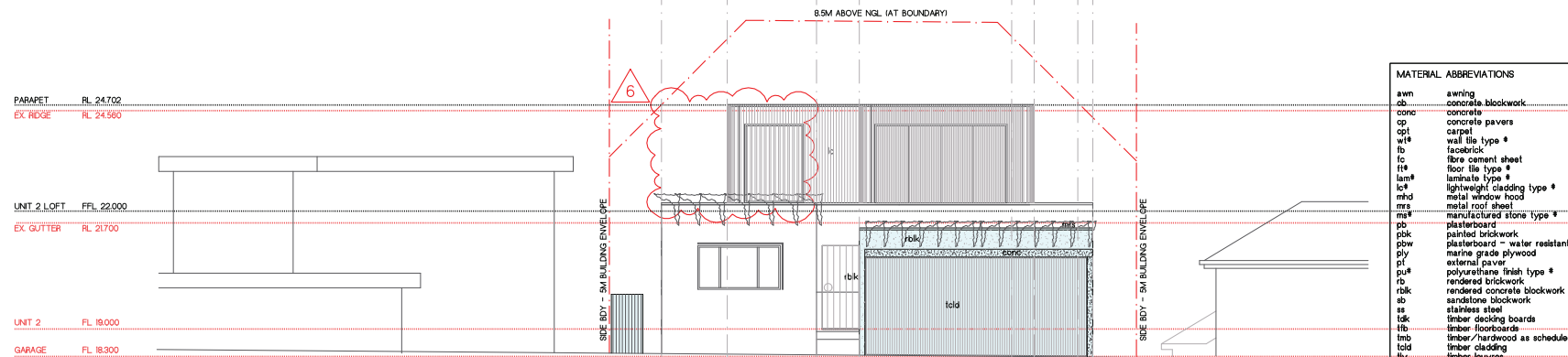
The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

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



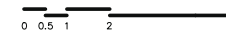


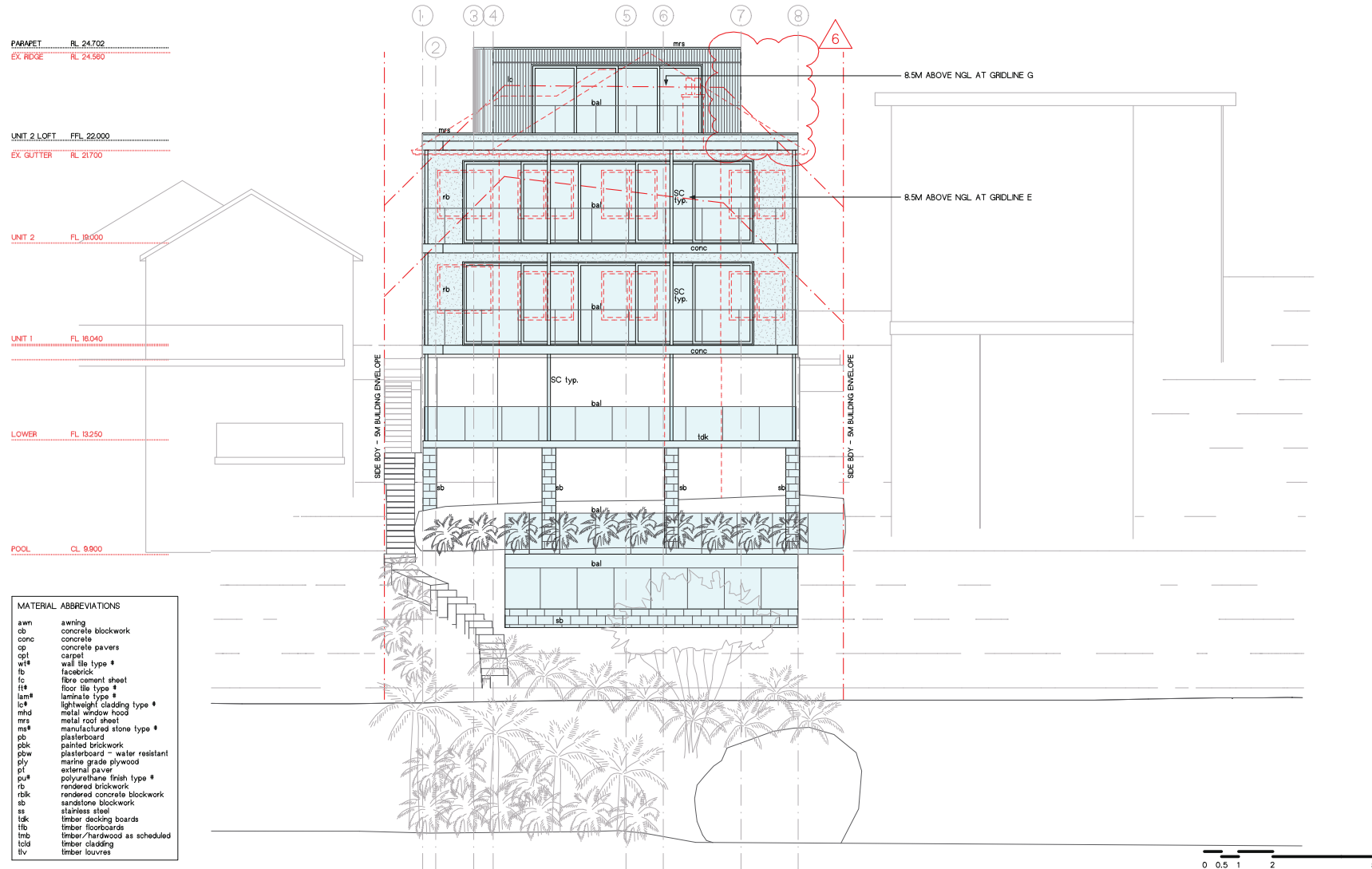
NORTH ELEVATION - AT BUILDING
Scale 1:100

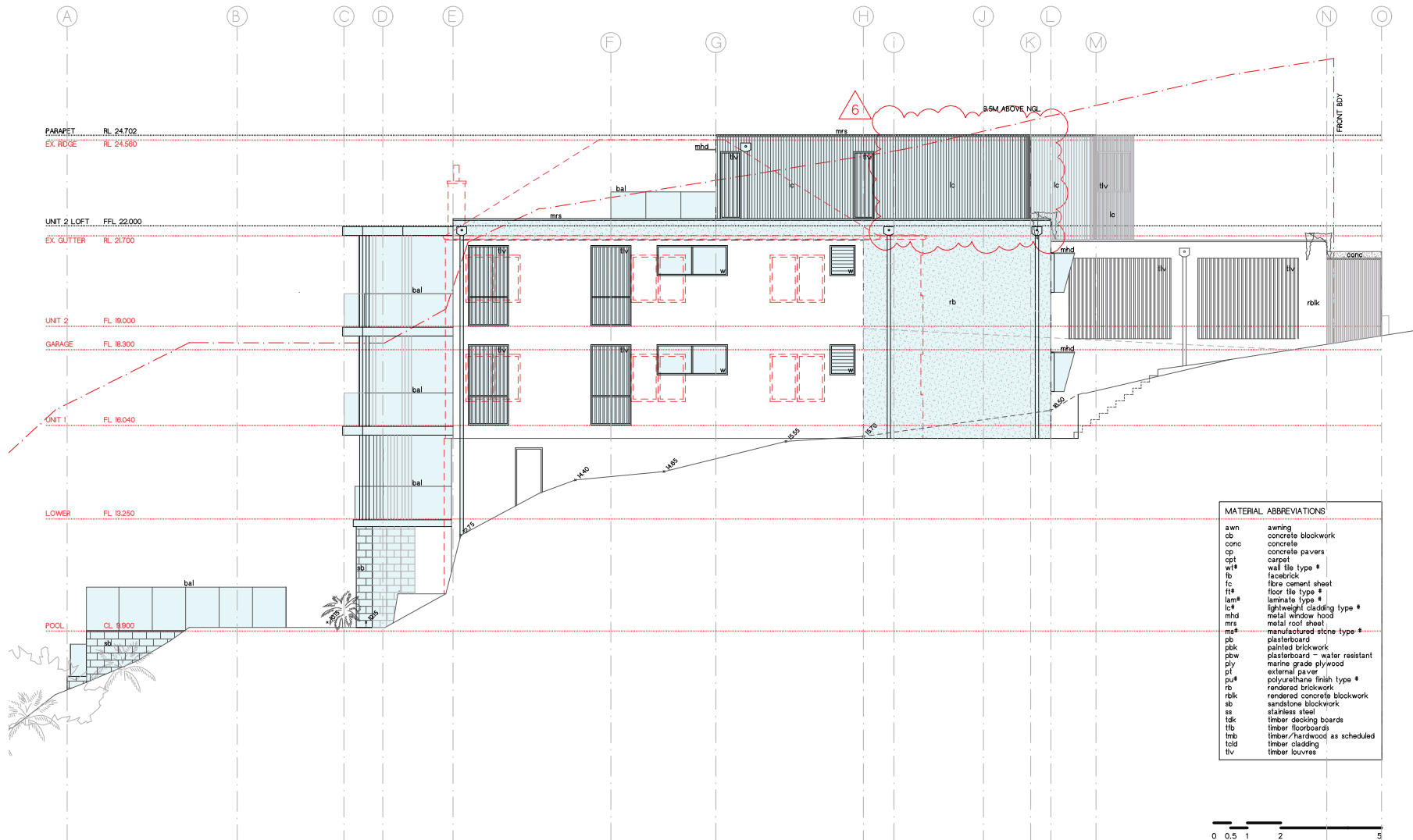


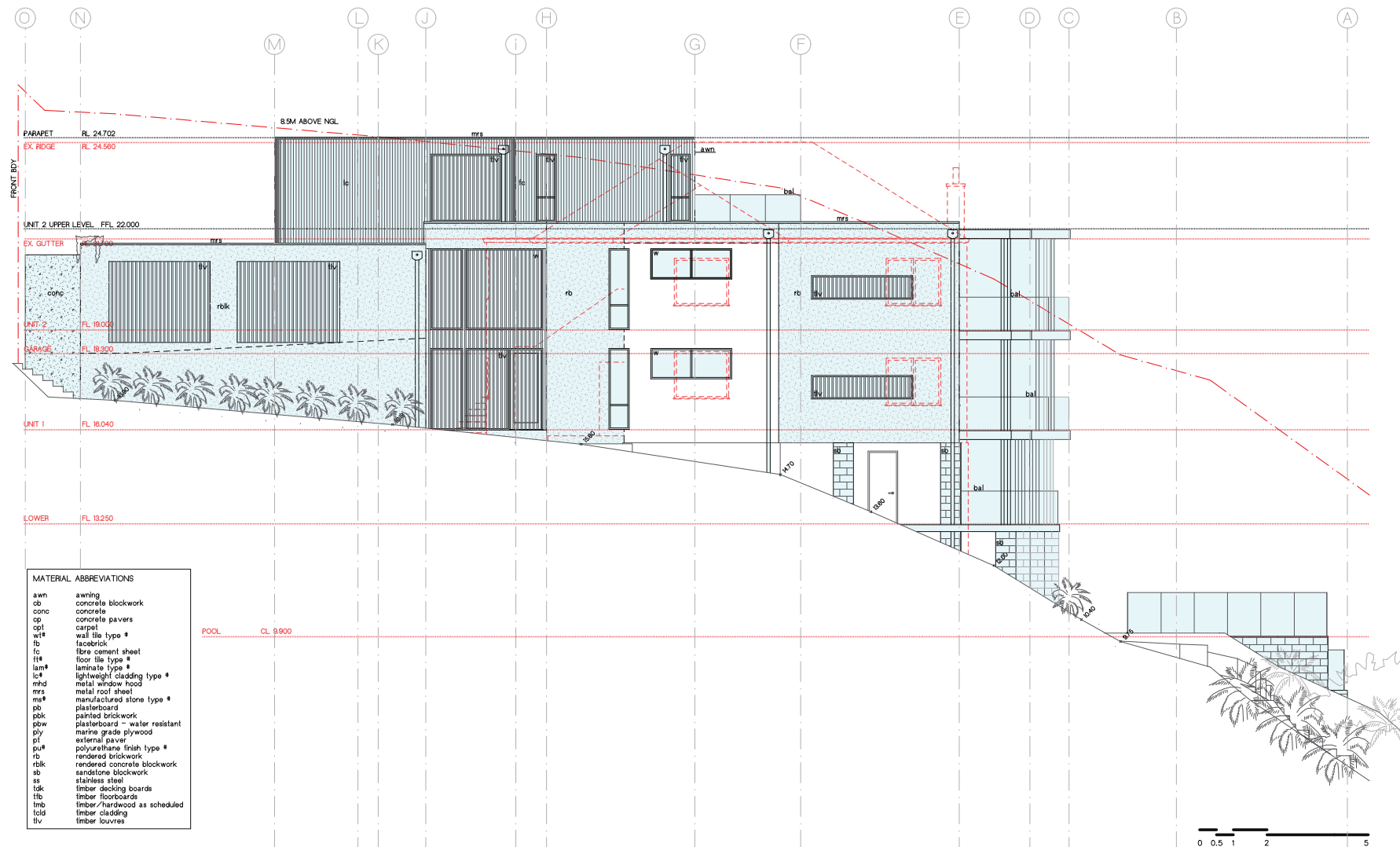
NORTH ELEVATION - AT BOUNDARY
Scale 1:100

MATERIAL ABBREVIATIONS	
awn	awning
ab	concrete blockwork
conc	concrete
cp	concrete pavers
cap	carpet
wt*	wall tile type *
fb	fibre cement sheet
fc	floor tile type *
lt*	laminated type *
lwt*	lightweight cladding type *
lc*	metal window hood
mhd	metal roof sheet
ms*	manufactured stone type *
pb	plasterboard
pik	plasterboard - water resistant
ply	marine grade plywood
pl	external paver
pu*	polyurethane finish type *
rb	rendered brickwork
rbk	rendered concrete blockwork
ab	sandstone blockwork
ss	stainless steel
td	timber decking boards
tfb	timber floorboards
tmb	timber/hardwood as scheduled
told	timber cladding
tlv	timber louvres











*request to vary
a development standard*



REQUEST TO VARY A DEVELOPMENT STANDARD

54 GREYCLIFFE STREET
QUEENSCLIFF NSW 2096

August 2023

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northern beaches planning

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introduction

This request to vary a development standard is made by Northern Beaches Planning on behalf of Anthony Cassar in relation to a development application for the alterations and additions to the existing residential flat building comprising two units at 54 Greycliffe Street, Queenscliff (**site**). This request is made pursuant to clause 4.6 of Warringah Local Environmental Plan 2011 (**WLEP 2011**) and with regard to relevant case law.

This request supersedes a previous request (dated March 2023) and relates to amended plans by Pittwater Design and Draft dated 1 August 2023.

standard to be varied

With a maximum building height of 12.1m, the proposed development is non-compliant with the 8.5m maximum building height prescribed by clause 4.3 of WLEP 2011. The maximum building height is a development standard, as defined by the EP&A Act:

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

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

Accordingly, the provisions of clause 4.6 of WLEP 2011 can be applied.

Pursuant to clause 4.6(2) of WLEP 2011, consent may be granted for development even though the proposal contravenes a development standard prescribed by an environmental planning instrument. Whilst this clause does not apply to those standards expressly excluded from this clause, the building height development standard of clause 4.3 of WLEP 2011 is not expressly excluded and thus, the provisions of clause 4.6 can be applied in this instance.

extent of the proposed breach

The proposed development reaches a maximum height of 12.02m, representative of a 3.52m or 41% variation to the 8.5m maximum building height development standard. The maximum height exceedance occurs where the roof over the rear balcony on the lower level of Unit 2 (at RL 21.96m AHD) extends over the rear levelled terrace (at RL 9.94m AHD).

The proposed upper floor additions also result in non-compliance with the maximum building height development standard, with a maximum height of 9.7m at the south-western corner of the parapet roof, representative of a 1.2m or 14% variation to the height of buildings standard prescribed by clause 4.3 of WLEP 2011.

The extent of non-compliance with the 8.5m building height development standard is highlighted in the extract of Section 2 by Pittwater Design + Draft at Figure 1.

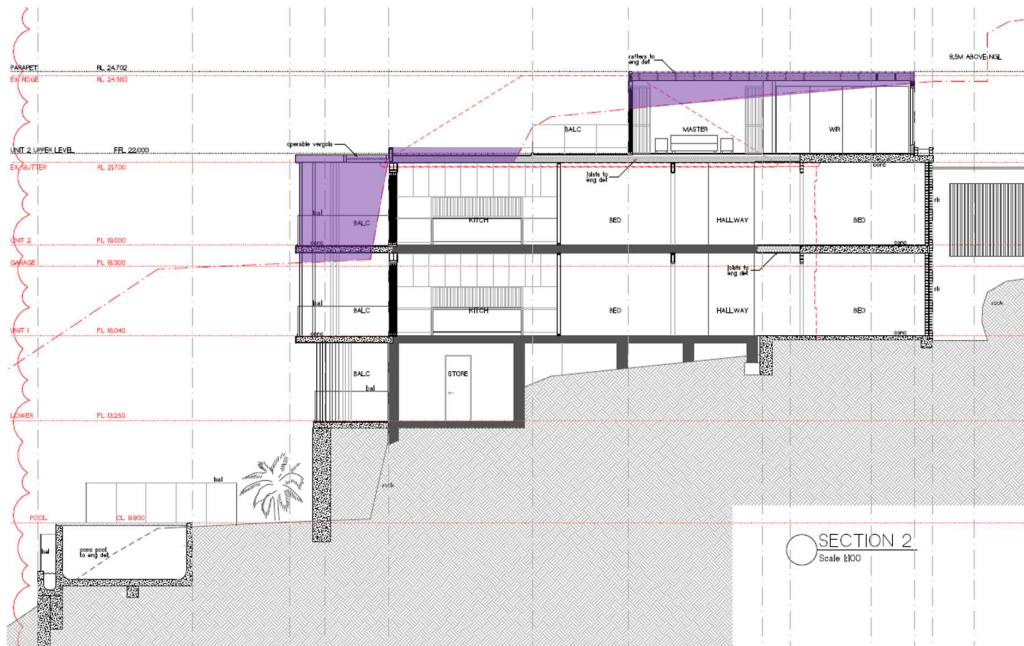


Figure 1: Extract of Section D with height non-compliance shown in purple

unreasonable or unnecessary

Pursuant to clause 4.6(4) of WLEP 2011, consent can only be granted if the consent authority is satisfied that the applicant's written request to vary the development standard has addressed the criteria of clause 4.6(3) of WLEP 2011. Clause 4.6(3)(a) of WLEP 2011 requires the applicant to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

In accordance with the decision of the NSW LEC in the matter of *Wehbe v Pittwater Council* [2007] NSWLEC 827 and as confirmed in the matter of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, one way in which strict compliance with a development standard may be found to be unreasonable or unnecessary is if it can be demonstrated that the objectives of the standard are achieved, despite non-compliance with the development standard.

The proposed development is consistent with the objectives of the building height development standard, as prescribed by clause 4.3(1) of WLEP 2011, as follows:

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

Comment: The proposed development has a two storey presentation to Greycliffe Street, with no more than 3 storeys in any one place presenting to the reserve to the rear. The maximum RL (24.70m AHD) of the proposed new upper floor is generally consistent with the existing ridgeline of the building (24.58m AHD) and is not incompatible with the ridgeline of adjoining dwellings, being 23.25m AHD at 52 Greycliffe Street and 25.07m AHD at 50 Greycliffe Street. Furthermore, the presentation of the development in storeys and the maximum height of the development is not dissimilar to previous approvals granted by Council in relation to properties along Greycliffe Street, including:

- 36-38 Greycliffe Street, Queenscliff (DA2022/0671) with a height of 9.1m
- 44 Greycliffe Street, Queenscliff (DA2020/1285) with a height of 11.2m, a maximum RL of 23.26m AHD and an elevated four storey presentation to the south
- 50 Greycliffe Street, Queenscliff (DA2011/0301) with a height of 12.3m, a maximum RL of 25.07m AHD and an elevated 4 storey presentation to the south
- 24 Greycliffe Street, Queenscliff (DA2017/0413) with a height of 9.5m
- 26 Greycliffe Street, Queenscliff (DA2023/0202) with a height of 12.6m

Consistent with the findings of the NSW LEC in the matter of *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191, to be compatible in an urban design context is to be capable of existing in harmony together. Visually, the height and scale of the proposed two-three storey building is compatible with surrounding and nearby development.

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

Comment: The height non-compliance associated with the additions to the rear of the lower level of Unit 2 do not result in any adverse impacts upon the amenity of adjoining properties with respect to solar access, visual amenity, views or privacy. Furthermore, the proposed upper

floor is set back from the levels below and is screened from views from immediately adjoining properties.

The submissions from the adjoining property at 56 Greycliffe Street in relation to impacts upon views are acknowledged. However, as demonstrated in the extract of the Southern Elevation (Figure 2), any such impact to views cannot be associated with the portion of the development that exceeds the height plane.



Figure 2: Extract of the Southern Elevation with height plane at the leading edge of the balcony shown in red and available view corridors from 56 Greycliffe Street in blue

The visual impact of the building is significantly improved, with the proposed alterations and additions providing a much-needed uplift of the appearance of the existing building, with the utilisation of skilful design techniques and high-quality materials providing additional articulation to the facades of the development.

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

Comment: The proposed development is compatible with the form and scale of surrounding and nearby development and will not be visually offensive in the streetscape context or when seen from the adjacent reserve. The proposed additions have been designed to integrate with the form of the existing building and the resultant development is a well-articulated and skilful design solution that is appropriately responsive to the context of the site.

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

Comment: The proposed development has a two storey presentation to Greycliffe Street, with no more than 3 storeys in any one place presenting to the reserve to the rear. When viewed from a distance, the proposed development would not be readily distinguishable in its context, which is characterised by comparably large dwellings with limited landscaping.

As such, strict compliance with the maximum building height development standard is unreasonable and unnecessary in the circumstances of this case.

sufficient environmental planning grounds

Clause 4.6(3)(b) of WLEP 2011 requires the applicant to demonstrate that there are sufficient environmental planning grounds to justify contravention of the standard. The specific environmental planning grounds to justify the proposed contravention of the height standard are as follows:

1. Topography

The topography of the site falls from the north down towards the south, with the maximum height breach occurring where the natural ground falls away quite significantly, with a sheer drop of 3m at the southern façade of the existing building. The maximum height exceedance occurs where the proposed Unit 2 lower deck extends over this drop.

2. Characterisation of development

The proposed development is appropriately characterised as alterations and additions to the existing residential flat building (that benefits from existing use rights), with the maximum height breach occurring as a consequence of the desire to provide private open space adjacent to the internal living areas of the existing dwellings, the floor levels of which are already established.

The breach associated with the proposed new upper floor is exacerbated by the elevated nature of the ground floor that is raised above ground level. Nonetheless, the upper floor is limited to three storeys in height, consistent with the scale of neighbouring and nearby development.

The proposed upper ridgeline of the development remains generally the same as the existing ridgeline, with a reduction in height and massing at the rear of the building arising as a consequence of the proposed demolition of the existing roof form (Figure 3).

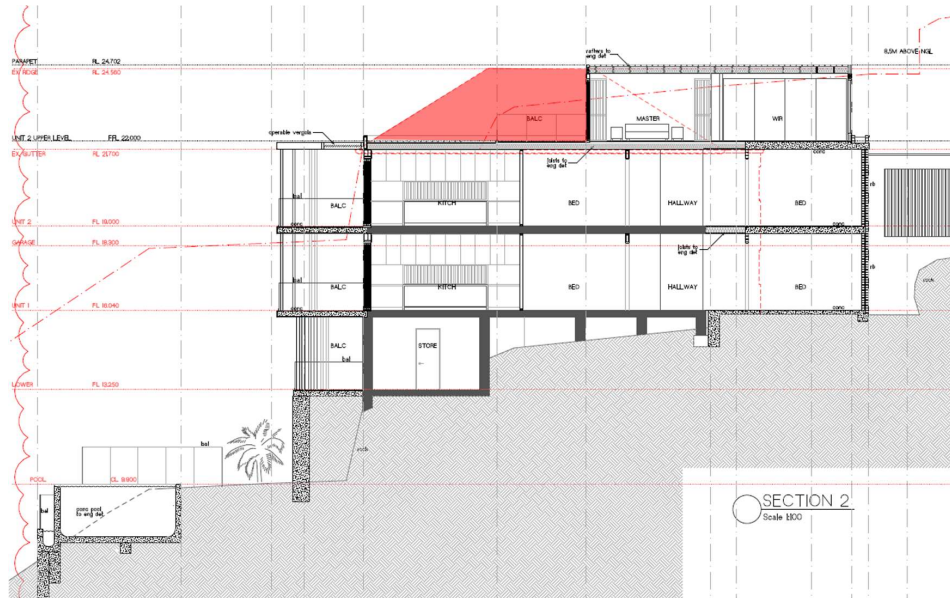


Figure 3: Extract of Section 2 with existing roof form above the height plane to be demolished shown in red.

3. Contextual response

There is a strong precedence of three storey development and/or exceedance of the 8.5m height limit in the vicinity of the site. The proposed development has a two storey presentation to Greycliffe Street, with no more than 3 storeys in any one place presenting to the reserve to the rear. The maximum RL (24.70m AHD) of the proposed new upper floor is generally consistent with the existing ridgeline of the building (24.58m AHD) and is not incompatible with the ridgeline of adjoining dwellings, being 23.25m AHD at 52 Greycliffe Street and 25.07m AHD at 50 Greycliffe Street. Furthermore, the presentation of the development in storeys and the maximum height of the development is not dissimilar to previous approvals of Council, including:

- 44 Greycliffe Street, Queenscliff (DA2020/1285) with a height of 11.2m, a maximum RL of 23.26m AHD and an elevated four storey presentation to the south (Figure 4),
- 50 Greycliffe Street, Queenscliff (DA2011/0301) with a height of 12.3m, a maximum RL of 25.07m AHD and an elevated 4 storey presentation to the south (Figure 5), and
- 26 Greycliffe Street, Queenscliff (DA2023/0202) with a height of 12.6m (Figure 6).

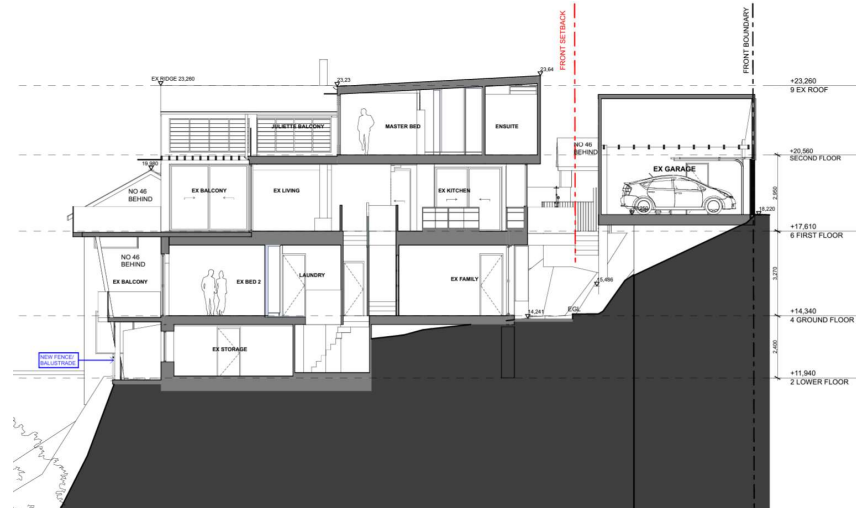


Figure 4: Section of development approved pursuant to DA2020/1285, as modified

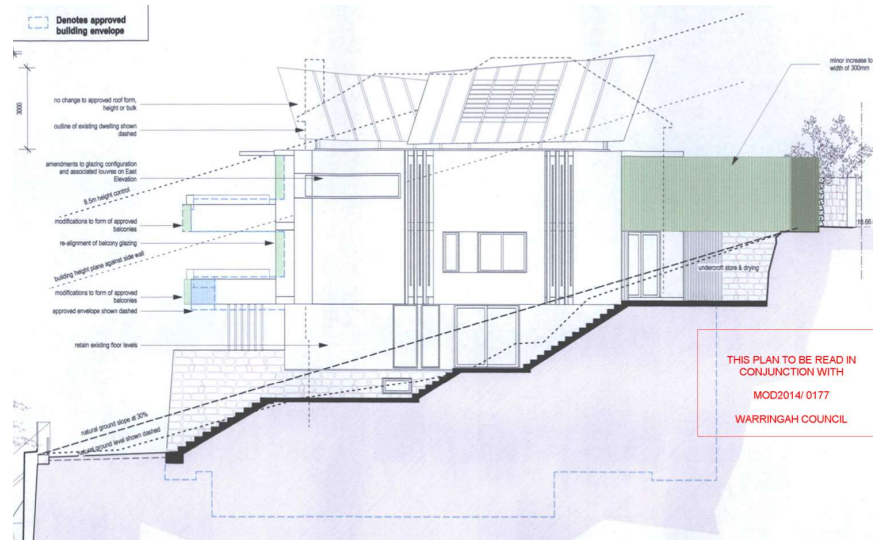


Figure 5: Eastern elevation of development approved pursuant to DA2011/0301, as modified

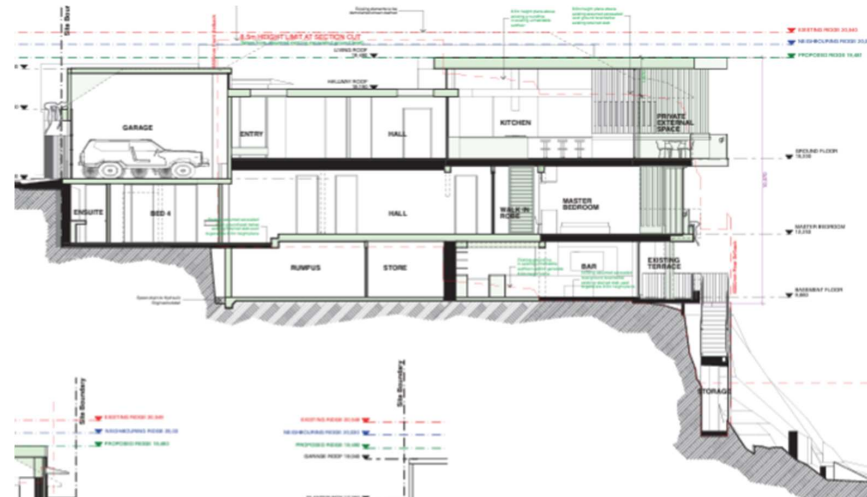


Figure 6: Extract of Section A of development approved pursuant to DA2023/0202 at 26 Greycliffe Street

4. Improved amenity

The breach associated with the rear balconies arises from the provision of usable private open space for each dwelling. The proposed balconies are designed to be directly accessible from the internal living area, to function as an extension of the internal habitable area. The provision of such areas of private open space is prescribed by the provisions of WDCP 2011 and the ADG and forms a critical component of contemporary housing on the Northern Beaches.

Allowing for the development to appropriately respond to the individual context of the site, including the levels of the existing dwelling and the irregular terrain of the site, promotes good design and amenity of the built environment, and the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants, consistent with objectives (g) and (h) of the EP&A Act.

Supporting a variation to the height plane that arises as a result of the need/desire to more readily comply with the provisions of Council's DCP in relation to the provision of private open space also promotes the orderly and economic development of the land, consistent with objective (c) of the EP&A Act.

Furthermore, allowing for a variation to the height plane that is consistent with the height and scale of nearby development promotes the orderly and economic development of the land, consistent with objective (c) of the EP&A Act.

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

public interest

Under the provisions of clause 4.6(4)(a) of WLEP 2011, consent must not be granted to a proposal that contravenes a development standard unless the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for the zone in which the development is to be carried out.

As identified above, the proposed development is consistent with the objectives of the building height development standard. Furthermore, the proposal is consistent with the objectives of the R2 Low Density Residential zone, as follows:

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

Comment: The proposed development provides for the growing/changing needs of the occupants of the development within a low density environment.

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

Comment: Not applicable.

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

Comment: The resultant development has an appropriate landscaped character, commensurate with that of surrounding development.

Council can be satisfied that the proposal is in the public's interest, in so far as it is consistent with both the objectives of the zone and the objectives of the maximum height limit.

concurrence

Pursuant to clause 4.6(4) of WLEP 2011, development consent must not be granted to a development that contravenes a development standard unless the concurrence of the Secretary has been obtained. In accordance with the *Variations to Development Standards* Planning Circular issued by the Department of Planning, Industry and Investment on 5 May 2020, and in accordance with the Local Planning Panels Direction issued by the Minister for Planning and Public Spaces, dated 30 June 2020, the concurrence of the Secretary can be assumed by the Northern Beaches Local Planning Panel.

conclusion

Overall, the consent authority can be satisfied that this written request has adequately addressed all relevant matters and that the provisions of clause 4.6 of WLEP 2011 have been met. As such, there is no jurisdictional impediment to the granting of consent in relation to the proposed breach of the building height development standard.



Rebecca Englund
B Arch Studies | M Plan | MPIA

Director | Northern Beaches Planning

5.0 NON PUBLIC MEETING ITEMS

ITEM 5.1 **REV2023/0018 - 61 ROBERTSON ROAD, SCOTLAND ISLAND
- REVIEW OF DETERMINATION OF APPLICATION
DA2022/1863 FOR ALTERATIONS AND ADDITIONS TO A
DWELLING HOUSE**

AUTHORISING MANAGER **Steve Findlay**
TRIM FILE REF **2023/626193**
ATTACHMENTS 1 [↓ Assessment Report](#)
 2 [↓ Site Plan & Elevations](#)
 3 [↓ Clause 4.6](#)

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Limited Development in the Foreshore Area of Clause 7.8 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 the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. REV2023/0018 for Review of Determination of Application DA2022/1863 for alterations and additions to a dwelling house on land at Lot 119 DP 12749, 61 Robertson Road, SCOTLAND ISLAND and Lot LIC 556720, 61 Robertson Road, SCOTLAND ISLAND subject to the conditions set out in the Assessment Report.

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2023/0018
Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 119 DP 12749, 61 Robertson Road SCOTLAND ISLAND NSW 2105 Lot LIC 556720, 61 Robertson Road SCOTLAND ISLAND NSW 2105
Proposed Development:	Review of Determination of Application DA2022/1863 for alterations and additions to a dwelling house
Zoning:	C3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Craig Andrew Lauchlan Jennifer Lauchlan
Applicant:	Sean Clive Gartner
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:	7.8 Limited development on foreshore area
Recommendation:	Approval
Estimated Cost of Works:	\$ 528,000.00

EXECUTIVE SUMMARY

This Review Application is made under Section 8.2 of the EP&A Act, and seeks a review of the determination of Development Application No. DA2022/1863 for alterations and additions to a dwelling house.

As the current application involves a variation to the non-numerical Foreshore Area development standard (PLEP 2014, Clause 7.8), the application is referred to the Northern Beaches Local Planning

Panel (NBLPP) for determination.

DA2022/1863 was refused by Council under staff delegation on 28 April 2023. The DA was determined under delegation, as the interpretation of Clause 7.8 at the time was different to the current interpretation in relation to *"the footprint of the building extending further into the foreshore area"*.

Council's assessment found that DA2022/1863 included insufficient information to demonstrate that an existing Spotted Gum, identified as Tree T22, was capable of being retained as a result of the development. In the absence of the required information, Council was unable to properly consider the proposal against the relevant requirements of the NSW Biodiversity Conservation Act 2016, State Environmental Planning Policy (Resilience and Hazards) 2021, the Pittwater LEP and P21 DCP.

The inadequate information relating to Tree T22 formed the basis of Council's refusal of the application.

The subject Review Application, as submitted, included a minor amendment to reduce the footprint of the proposed addition (store room) in proximity to Tree T22. This amendment and supporting sectional information are found to be sufficient to demonstrate that Tree T22 can be retained and therefore satisfactorily address Council's previous concerns.

Further amendments were made during the assessment of the Review Application to reduce the extent of works within the Foreshore Area that trigger the Clause 4.6 variation.

As mentioned above, the review of determination application includes a Clause 4.6 variation to PLEP 2014, namely in relation to Clause 7.8 Limited Development in the Foreshore Area. This applies to the proposed storeroom and kitchen additions to the dwelling, which are located within the Foreshore Area. The current interpretation of the clause, means the works are an extension of the footprint of the building further into the foreshore area, by 8.7m². Previously, and when the DA was assessed and determined, the landward and sideward extension of a building was not deemed to be an extension into the Foreshore Area.

The applicant's Clause 4.6 written request is found to be well founded and the variation is supported. It is noted that the stair and retaining wall works proposed within the Foreshore Area are permitted pursuant to PLEP 2014, Clause 7.8(2) as they are a rebuild, and do not require a variation to the development standard.

The proposal also includes variations to the side building line and building envelope controls contained within the P21 DCP. On assessment, the proposal is found to achieve the outcomes of these controls and is supported on merit.

No submissions were received in response to Council's notification of the application.

The application has addressed the reasons for refusal, which should no longer be maintained, and the Panel should support the Clause 4.6 variation and **APPROVE** the application.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks review of Council's refusal of DA2022/1863, which sought consent for alterations and additions to an existing dwelling.

The proposed development, as submitted, remains largely unchanged from that proposed under DA2022/1863, with only a minor reduction in the built form in proximity to Tree T22 to ensure its retention.

Additional sectional information is also included to assist in the assessment of impacts to Tree T22.

Specifically, the proposal comprises the following works:

Ground floor

- Internal reconfiguration

Level 1

- Extend Kitchen
- New Store and landing
- New window hood to W.05

Level 2

- Extend Bed 1 with new northern deck
- Extend WC
- New Laundry
- Internal reconfiguration
- New WC and retaining wall to existing studio

External

- New foreshore access stairs
- Make good/repair foreshore retaining walls
- Demolish stair path adjacent to eastern boundary
- Minor landscaping works

Amendment of the Proposal

Following lodgement, the application was amended to delete the proposed western roof extension over the living room and replace the proposed new bay window W.05 with a window hood over the existing window.

The proposed amendments result in a reduction in environmental impacts and do not require re-notification, in accordance with the Northern Beaches Community Participation Plan.

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;

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

SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 8.3 - Environmental Planning and Assessment Act 1979 - Section 8.3
Pittwater Local Environmental Plan 2014 - Zone C3 Environmental Management
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 5.10 Heritage conservation
Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area
Pittwater 21 Development Control Plan - A4.8 Lower Western Foreshores and Scotland Island Locality
Pittwater 21 Development Control Plan - B3.1 Landslip Hazard
Pittwater 21 Development Control Plan - B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community
Pittwater 21 Development Control Plan - C1.3 View Sharing
Pittwater 21 Development Control Plan - C1.4 Solar Access
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - C1.14 Separately Accessible Structures
Pittwater 21 Development Control Plan - D8.6 Side and rear building line
Pittwater 21 Development Control Plan - D8.8 Building envelope
Pittwater 21 Development Control Plan - D8.9 Landscaped Area

SITE DESCRIPTION

Property Description:	Lot 119 DP 12749 , 61 Robertson Road SCOTLAND ISLAND NSW 2105 Lot LIC 556720 , 61 Robertson Road SCOTLAND ISLAND NSW 2105
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northern side of Robertson Road.</p> <p>The site is irregular in shape with a frontage of 10.06 metres along Robertson Road and a maximum depth of 72.24 metres. The site has a surveyed area of 790.4m².</p> <p>The site is located within the C3 Environmental Management zone and adjoins the W1 Natural Waterway zone within the Pittwater Local Environmental Plan 2014 (PLEP 2014) and accommodates a split level three storey residential dwelling within a densely landscaped setting. In addition, the site includes a detached studio, boatshed, jetty and a skid ramp.</p>

	<p>The site is located on a slope of approximately 21.2 metres, falling toward the northern boundary at the water frontage.</p> <p>The site is not known to accommodate threatened species.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by one and two-storey residential dwellings with ancillary water front developments such as boat sheds, jetties and pontoons, and incline passenger lifts.</p>
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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:

N0093/15 - Development application for a boat shed, deck and skid ramp - Approved 21 May 2015.

BC2020/0209 - Building certificate for a pontoon - Approved 8 March 2021.

DA2022/1863 - Alterations and additions to a dwelling house - Refused 28 April 2023. The application was refused by Council as insufficient information was provided to demonstrate that an existing Spotted Gum, identified as T22, was capable of retention as a result of the development.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

are:

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<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	<p>(i) Environmental Impact</p> <p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21</p>

Section 4.15 Matters for Consideration	Comments
impacts on the natural and built environment and social and economic impacts in the locality	Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

Section 8.3 Assessment

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 and the notice of determination issued on 28 April 2023. The review was lodged on 2 August 2023 and is to be considered by the Northern Beaches Local Planning Panel on 18 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.

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

Therefore, it is concluded that the amended scheme is substantially the same as the original proposal.

Accordingly, it is considered that the proposal satisfies the requirement of Section 8.3 (3) of the Act.

Amendment of the Proposal following Refusal of DA2022/1863

The reasons for Council's refusal of DA2022/1863 were as follows:

1. **Pursuant to Section 4.15(1)(a)(iv) of the Environmental Planning and Assessment Act 1979, insufficient information has been submitted to enable the assessment of the application.**
Particulars:
i) The application does not include a Biodiversity Development Assessment Report (BDAR) or a detailed arborist reports and as only limited sectional detail has been provided to assess the impacts of the development upon an existing Spotted Gum (T22) within the Biodiversity Values Map, the impact upon this tree are unknown. The consequence of the absence of this information is such that a detailed assessment of this application cannot be completed against under the NSW Biodiversity Conservation Act 2016, as there is no ability to be certain of the environmental impacts arising as a result of the proposed development.
2. **Pursuant to Section 4.15(1)(a)(i), (b) & (c) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of State Environmental Planning Policy (Resilience and Hazards) 2021.**
Particulars:
i) In the absence of adequate sectional detail, the assessment of this application cannot be completed against the relevant matters prescribed within Clauses 2.10, 2.11 and 2.12 of the State Environmental Planning Policy (Resilience and Hazards) 2021. It is considered that the proposed development does not comply with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.
3. **Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Pittwater Local Environmental Plan 2014.**
4. **Pursuant to Section 4.15(1)(a)(i) (iii), (b) & (c) Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with Clause 1.2 Aims of the Plan, Clause Zone C3 Environmental Management, Clause 7.2 Earthworks, Clause 7.6 Biodiversity protection and Clause 7.8 Limited development on foreshore area of the Pittwater Local Environmental Plan 2014; and Control A4.8 Lower Western Foreshores and Scotland Island Locality, B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community, C1.1 Landscaping, D8.6 Side and rear building line and D8.9 Landscaped Area of the Pittwater 21 Development Control Plan.**
Particulars:
i) In the absence of required information, the assessment of this application cannot be certain that Clause 1.2, Zone C3 Environmental Management objectives, Clause 7.2, Clause 7.6 and Clause 7.8 of the Pittwater Local Environmental Plan 2014 can be met. Additionally, the assessment of this application cannot be certain as to the extent of adverse impacts upon the surrounding natural environment, as considered under controls A4.8, B4.7, C1.1, D8.6, and D8.9 of the Pittwater 21 Development Control Plan.
5. **Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979 the proposed development is not within the public's interest.**
Particulars:
i) The lack of information and ability to satisfy the requirements of State Environmental Planning Policy (Resilience and Hazards) 2021, Biodiversity Conservation Act 2016 and

Pittwater Local Environmental Plan 2014 are such that approval of the development is not within the public's interest.

The five above reasons for refusal were included solely due to the insufficient information regarding the retention of Tree T22. In response to these reasons for refusal, the Applicant has amended the proposal by reducing the footprint of the proposed store addition in proximity to Tree T22, to ensure the retention of the tree.

Additional sectional information was also included to assist in the assessment of impacts to Tree T22 by Council.

As a result, Council's Landscape and Biodiversity Referral sections are satisfied that Tree 22 can be retained and the previous reasons for refusal have been resolved.

Accordingly, the proposal can now be **supported**.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application that included a certificate (prepared by Bush Fire Planning Services, dated 9 March 2023) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

A further letter prepared by Bush Fire Planning Services, dated 31 July 2023, was submitted to Council advising that the revised proposal does not adversely affect the results of the original bushfire assessment.

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
Environmental Health (Acid Sulfate)	<p>Supported without conditions.</p> <p>General Comments</p> <p>This application is a request for a review of determination on DA</p>

Internal Referral Body	Comments
	<p>2022/1863.</p> <p>Matters within the application do not affect the original assessment of Acid Sulfate Soils, therefore no further conditions are required and the original recommendations as per 2022/718182 still applies.</p> <p>Recommendation</p> <p>APPROVAL - no conditions</p>
Environmental Health (Unsewered Lands)	<p>Supported without conditions.</p> <p>General Comments</p> <p>This application requests a review of determination of DA2022/1863 for alterations and additions to an existing dwelling at 61 Robertson Road, Scotland Island.</p> <p>The proposed changes within this review do not affect the unsewered lands assessment conducted as part of DA2022/1863 therefore the original conditions of consent still apply.</p> <p>Environmental Health recommends approval.</p>
Landscape Officer	<p>Supported with conditions.</p> <p>The proposal is supported with regard to landscape issues.</p> <p>Council's Landscape Referral section have assessed the application against the Pittwater Local Environment Plan 2014 zone C3 Environmental Management, 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 • D8 Lower Western Foreshores and Scotland Island Locality <p>The site is within zone C3 Environmental Management, and the following objectives are to be achieved and/or maintained by development: protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values; provide for residential development of a low density and scale integrated with the landform and landscape, and not visually prominent; encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors; and ensure the continued viability of ecological communities and threatened species.</p> <p>No trees are proposed to be removed to facilitate the works, and the tree retention is supported by the findings in the Arboricultural Impact Assessment. The Arborist notes works will occur within the tree protection zone of trees 22, 23, 25, 26, 27 and 28, and as such a Project Arborist shall be engaged to supervise these works.</p>

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	<p>Supported with conditions.</p> <p>The comments in this referral relate to the following applicable controls and provisions:</p> <ul style="list-style-type: none"> • NSW Biodiversity Conservation Act 2016 (BC Act) • NSW Biodiversity Conservation Regulation 2017 (BC Reg) • SEPP (Resilience and Hazards) 2021 - Development within the coastal environment • Planning for Bushfire Protection 2019 • Pittwater LEP - Clause 7.6 Biodiversity Protection • Pittwater 21 DCP - Clause B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community <p>Portions of the site are identified on the Department of Planning and Environment's Biodiversity Values Map (BV Map). Under the NSW Biodiversity Conservation Act, any removal of native vegetation from within mapped areas will trigger the Biodiversity Offsets Scheme (BOS) and the requirement for a Biodiversity Development Assessment Report (BDAR).</p> <p>The Arboricultural Impact Assessment (Naturally Trees, March 2023) assesses 28 trees and concludes that all trees can be retained, subject to recommended protection measures. Furthermore, the submitted ecologist's statement (ACS Environmental, April 2023) clarifies that, as no native tree or vegetation removal is required, entry into the BOS is not triggered.</p> <p>Finally, the bushfire report (Bushfire Planning Services Pty Limited, March 2023) recommends that the site be managed as an Asset Protection Zone (APZ) in perpetuity, and states that "it is not envisaged that any significant vegetation removal or modification will be required to meet the APZ requirements for this proposal". It should be noted that any future impact to native vegetation within the BV Map, including any future clearing for the APZ, may require a BDAR under the BC Act 2016.</p>
NECC (Coast and Catchments)	<p>Supported without conditions.</p> <p>The review application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Resilience & Hazards) 2021 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP.</p> <p>Coastal Management Act 2016</p> <p>The subject site has been identified as being within the coastal zone and therefore Coastal Management Act 2016 is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the Coastal Management Act</p>

Internal Referral Body	Comments
	<p>2016.</p> <p>State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA.</p> <p>Comment: On internal assessment , the DA satisfies requirements under clauses 2.10, 2.11 and 2.12 of the SEPP R&H. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021.</p> <p>Pittwater LEP 2014 and Pittwater 21 DCP</p> <p>Estuarine Risk Management 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>As previously assessed, the ground floor level for the proposed additions and alterations is above the applicable EPL for the site. The proposed development is therefore able to satisfy the relevant estuarine risk management requirements of P21 DCP.</p>
NECC (Development Engineering)	<p>Supported with conditions.</p> <p>The development is in Region 1. The development site is a Low Level Property which drains directly to a waterbody. The site is in a geotechnical hazard zone and a geotechnical report has been provided. I have no objections to the proposed development.</p>
Parks, reserves, beaches, foreshore	<p>Supported without conditions.</p> <p>Clause 7.8(3)(b) of the PLEP 2014 permits development on the foreshore area where "the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area". Parks Reserves and Foreshores Referral consider the proposed development works, with the retention of existing native trees within the foreshore zone, satisfies the objectives of clause 7.8.</p>
External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p>Supported with conditions.</p> <p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the</p>

External Referral Body	Comments
	relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	<p>Supported, with 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. A478714_02 dated 31 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 raised no objections, subject to conditions which have been included in the recommendation of this report.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

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

Comment:

Council's Natural Environment & Climate Change referral sections raised no concerns in relation to the impacts of the amended proposal on the natural environment, coastal values and processes, water quality or marine vegetation. The proposal will not impact upon foreshore access or the surf zone. The applicant was referral to the Aboriginal Heritage Office, who raised no objection to the works subject to

the recommended conditions.

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

Comment:

Council is satisfied that the proposal will have no adverse impacts in relation to the matters referred to in subsection (1).

Division 4 Coastal use area

2.11 Development on land within the coastal use area

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

Comment:

The proposed works are appropriately sited and designed and will not cause adverse impacts in relation to foreshore access, overshadowing, views, visual amenity or Aboriginal or built heritage values.

Division 5 General

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

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

Comment:

The proposal is unlikely to cause increased risk of coastal hazards on the 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	6.4m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	No
7.10 Essential services	Yes

Detailed Assessment

Zone C3 Environmental Management

The proposed development is considered and assessed against the objectives of the C3 Environmental Management zone of the PLEP 2014, as follows:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
- *To provide for a limited range of development that 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 and not visually prominent.*
- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*
- *To ensure the continued viability of ecological communities and threatened species.*

Comment:

The proposed development is of a density, scale and design that will not have an adverse impact upon the environmental, cultural or aesthetic values of the area, or be incompatible with the local character.

The proposal will not adversely impact riparian and foreshore vegetation or wildlife corridors present on the site and surrounds.

The works proposed within the Foreshore Area are supported based on the assessment completed against PLEP 2014, namely Clauses 4.6 and 7.8.

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the C3 Environmental Management zone.

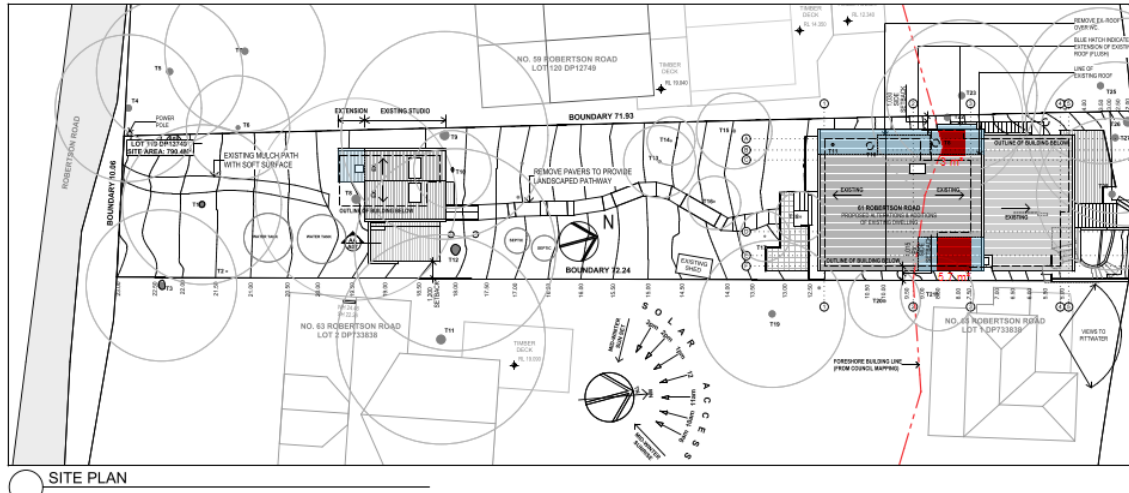
4.6 Exceptions to development standards

Description of Non-compliance

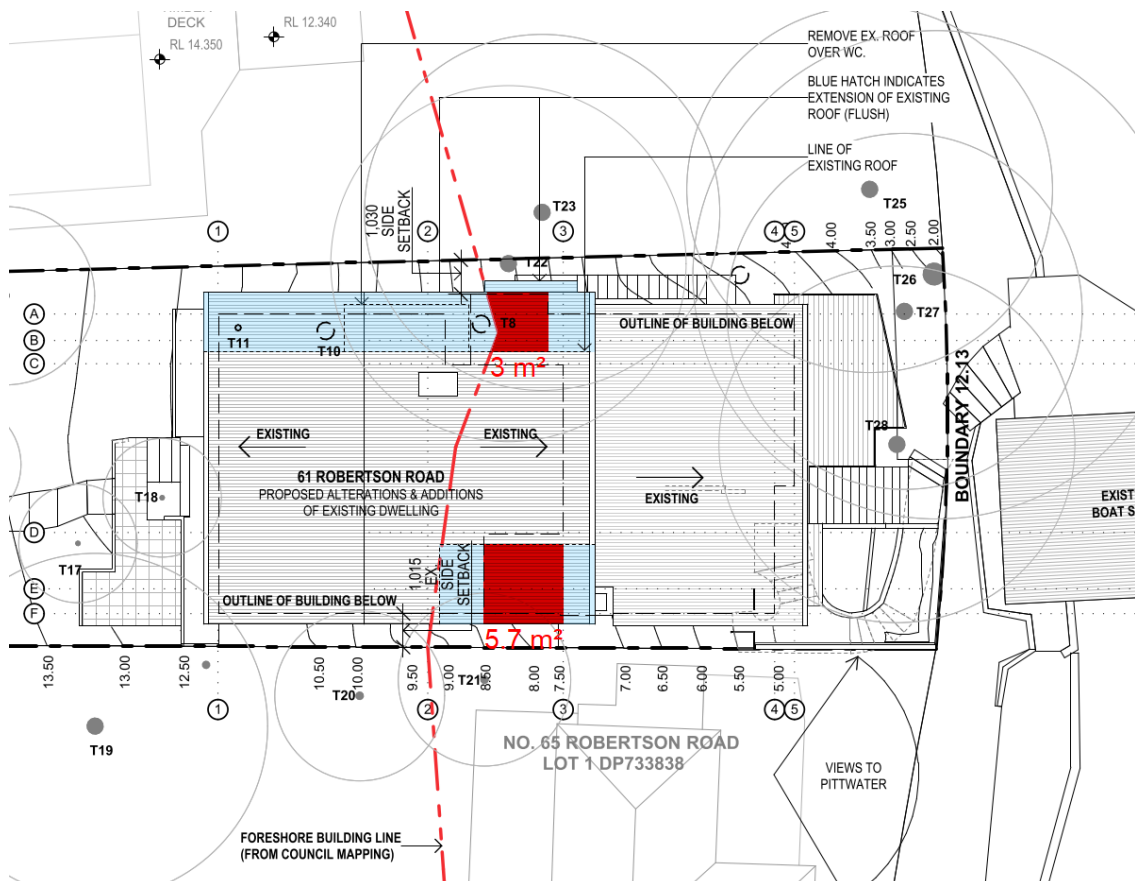
Development standard:	Limited Development on Foreshore Area
Requirement:	No extension of footprint within the foreshore area
Proposed:	8.7m ²
Percentage variation to requirement:	N/A

The proposed variation relates to the proposed storeroom and kitchen additions, with a total additional encroachment of 8.7m² into the Foreshore Area. The proposed works to existing retaining walls and waterway access stair within the Foreshore Area are permitted by exceptions (2) (a) and (b) of PLEP Clause 7.8. The remaining additions to the dwelling do not increase the footprint of the dwelling within the Foreshore Area.

The extent of the variation is indicated on the below plan excerpts.



Plan 1. Site Plan indicating the proposed variations shaded red.



Plan 2. Site Plan indicating the proposed variations shaded red (enlarged).

Assessment of Request to vary a Development Standard

The following assessment of the variation to Clause 7.8 Limited development on foreshore area 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 7.8 Limited development on foreshore area 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:

- *"Characterisation of development*
The proposed development contains only elements that are within the variations clause of the

standard and those works will provide compliance with the objectives of the standard.

- *Minor nature of breach*
As demonstrated in Figures 1 & 2 [of cl. 46 written request] the extent of the breach associated with the proposed additions to the dwelling are extremely minor and is limited to less than 1% foreshore area.
- *The proposed new structures do not give rise to any unreasonable impacts upon the amenity of adjoining sites or the wider public domain as the proposed works are set back further from the foreshore than the existing dwelling. The non-compliance will not be readily perceived from the waterway, with sufficient spatial separation and landscaping retained and enhanced forward/seaward of the dwelling house, within the foreshore area.*
- *The proposed development responds appropriately to the circumstances and the individual context of the site, including the siting & levels of the existing dwelling and proposed additions to the dwelling, and promotes good design and amenity of the built environment, and the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants, consistent with objects (g) and (h) of the EP&A Act.*
- *Furthermore, allowing for a variation to the foreshore building line that arises as a result of the need/desire to more readily comply with the provisions of Council's DCP promotes the orderly and economic development of the land, consistent with object (c) of the EP&A Act.*
- *Consistent with the findings of Commissioner Walsh in Eather v Randwick City Council [2021] NSWLEC 1075 and Commissioner Grey in Petrovic v Randwick City Council [2021] NSW LEC 1242, the particularly small departure from the standard and absence of impacts consequential of the departure constitute environmental planning grounds, as it promotes the good design and amenity of the development in accordance with the objects of the EP&A Act."*

Comment:

The proposed variation occurs due to minor additions located landward of the existing Level 1 floorplate. The proposed additions effectively "in-fill" existing alcoves at the eastern and western elevations and are appropriately sited in relation to the existing building footprint and the foreshore building line.

Given the proportion of the existing dwelling within the Foreshore Area, the minor extent of the breach and the logical siting of the additions, the proposal is found to promote the orderly and economic development of land and good design and amenity.

In this regard, the applicant's written request has demonstrated that the proposed development satisfies 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 Limited development on foreshore area development standard and the objectives of the C3 Environmental Management zone. An assessment against these objectives is provided below.

Objectives of Development Standard

The underlying objectives of the standard, pursuant to Clause 7.8 Limited development on foreshore area of PLEP 2014 are:

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

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

Comment:

The proposed works that are subject to the proposed variation are of minimum bulk and scale and will not adversely impact the significance or amenity of the foreshore area. The proposal was referred to Council's Landscape, Biodiversity and Coastal sections for review, none of which raised concerns in relation to natural foreshore processes.

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

Comment:

The proposal will not impact public access along the foreshore area or to the waterway.

Zone Objectives

The underlying objectives of the C3 Environmental Management zone are:

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

Comment:

The proposed works are appropriately designed and sited to protect, manage and restore the ecological, scientific, cultural and aesthetic values of the area.

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

Comment:

The proposal is for alterations and additions to an existing dwelling, which is a permitted land use in the C3 zone and is not found to cause any unreasonable impacts in relation to the above values.

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

Comment:

The development remains low density and is of a comparable scale to the surrounding locality. The proposed works are integrated with the landform and landscape, and are sited such that they will not be visually prominent when viewed from surrounding properties or the public domain.

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

Comment:

The proposal will not cause any unreasonable impact to riparian and foreshore vegetation or wildlife corridors. Suitable conditions are imposed to ensure the protection of existing trees on the site.

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

Comment:

Council's Biodiversity section is satisfied that the proposal will not unreasonably impact the viability of ecological communities or threatened species.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the C3 Environmental Management 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. Given the variation to the non-numerical Foreshore Area Development Standard, the concurrence of the Secretary is assumed by the Northern Beaches Local Planning Panel.

5.10 Heritage conservation

There are no known Aboriginal or built heritage sites in proximity to the site. The application was referred to the Aboriginal Heritage Office and a condition is imposed in the event that any Aboriginal sites are discovered during works.

7.6 Biodiversity protection

The application was referred to Council's Bushland and Biodiversity section, with no objections raised subject to the recommended conditions of consent.

7.8 Limited development on foreshore area

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

- (a) to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area,*
- (b) to ensure continuous public access along the foreshore area and to the waterway.*

Comment:

Based on the below assessment, it is concluded that the proposal will not impact upon natural foreshore processes, the amenity of the area or continuous public access to and along the foreshore and waterway.

Accordingly, the proposed achieves the objectives of the control.

(2) Development consent must not be granted for development on land in the foreshore area except for the following purposes:

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

Comment:

The proposal includes the following works within the foreshore area:

- i. The refurbishment of the existing stone retaining walls to the north of the dwelling;
- ii. The realignment of the existing waterway access stairs from the dwelling to the jetty;
- iii. The store addition at the western side of the dwelling; and
- iv. The kitchen addition at the eastern side of the dwelling.

The proposed retaining wall refurbishment does not alter the existing location or dimensions of the existing walls, therefore satisfying exception (a). The proposed changes to the waterway access stairs satisfy exception (b).

Accordingly, these proposed works are permitted under (2)(a) and (b).

The proposed storeroom and kitchen additions result in an extension of the footprint of the building located within the Foreshore Area, and therefore are not permitted under exceptions (a) or (b).

A further assessment of these elements of the proposal is completed in this report under Clause 4.6.

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

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

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

Comment:

The proposed development is found to be consistent with the objectives of the C3 Environmental Management zone and is compatible with the surrounding developments. The proposal will not cause environmental harm in relation to pollution, siltation, surrounding uses, marine habitat, wetland areas, flora or fauna habitats, drainage patterns or remnant riparian vegetation. The proposed development will not conflict with the use of the adjacent open space or waterway or impact public access along the foreshore. The proposed development will not result in adverse impacts to any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land. The proposed development is considered to be well-designed and will not have an adverse impact on the amenity or aesthetic appearance of the foreshore. The proposed development will not impact upon sea level rise, coastal erosion or recession, or change flooding patterns.

Based on the above assessment, Council is satisfied that the proposal will have no undue impacts in relation to the matters to be considered under subclause (3).

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

*continuous public access to and along the foreshore through or adjacent to the proposed development,
public access to link with existing or proposed open space,
public access to be secured by appropriate covenants, agreements or other instruments registered on*

*the title to land,
public access to be located above mean high water mark,
the reinforcing of the foreshore character and respect for existing environmental conditions.*

Comment:

The proposed development will retain continuous public access to and along the foreshore or surrounding areas. The proposed development is acceptable in relation to the foreshore character and the existing environmental conditions.

Conclusion

The proposed stair and retaining wall works are found to be consistent with the objectives of the control and satisfy the relevant matters for consideration.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	15.5m	N/A	Yes
Rear building line	FBL applies	Beyond FBL	N/A	No
Side building line	West: 2.5m	1.0m - 1.5m	60%	No
	East: 1.0m	1.0m	N/A	Yes
Building envelope	West: 3.5m	One breach: - Length 1.2m, up to 0.2m	4.3%	No
	East: 3.5m	Two breaches: - Length 0.3m, up to 0.3m - Length 1.7m, up to 0.9m	20%	No
Landscaped area	72%	67.1% 530.36m ²	6.8%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.8 Lower Western Foreshores and Scotland Island Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.15 Saltmarsh Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B5.13 Development on Waterfront Land	Yes	Yes
B6.11 Access Driveways, Internal Driveway and Off Street Parking Requirements - Dwelling House - Scotland Island	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
C1.14 Separately Accessible Structures	Yes	Yes
C1.23 Eaves	Yes	Yes
D8.1 Character as viewed from a public place	Yes	Yes
D8.3 Building colours and materials	Yes	Yes
D8.5 Front building line	Yes	Yes
D8.6 Side and rear building line	No	Yes
D8.8 Building envelope	No	Yes
D8.9 Landscaped Area	No	Yes
D8.13 Stormwater overflow	Yes	Yes
D8.15 Site disturbance	Yes	Yes
D8.16 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

A4.8 Lower Western Foreshores and Scotland Island Locality

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

"The Lower Western Foreshores and Scotland Island locality will remain primarily a low-density residential area with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape."

"Future development will maintain a building height limit below the tree canopy, and minimise bulk and scale. Existing and new native vegetation, including canopy trees, will be integrated with development. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural

environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards."

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

Comment:

The proposal maintains the two storey character and landscaped setting of the locality, integrates with the landscape and 'steps down' with the topography of the site. The proposed alterations and additions are relatively minor in bulk and scale, are well-articulated and remain below the tree canopy.

The amended development will not result in the removal of any native vegetation.

A condition is recommended requiring that the additions utilise colours and materials that blend with the surrounding natural environment.

Based on the above assessment, the proposal is found to be consistent with the desired future character of Scotland Island.

B3.1 Landslip Hazard

The site is mapped as Geotechnical Hazard H1. A letter prepared by Crozier Geotechnical Consultants, dated 31 July 2023, advises that the recommendations of the Geotechnical Report submitted with DA2022/1863, dated 9 September 2022, remain relevant to the amended development.

These recommendations are incorporated into the conditions of consent.

B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community

Council's Bushland and Biodiversity and Landscape Officer's raised no objection to the proposal as no native tree or vegetation removal is required.

C1.3 View Sharing

No submissions were received in relation to view loss impacts and it is not anticipated that the proposal will adversely impact significant views from surrounding properties.

C1.4 Solar Access

The height, bulk and scale of the proposed additions are minor and will not result in an excessive or non-compliance level of overshadowing of the adjoining properties, which are orientated to the north.

C1.5 Visual Privacy

Compliance with control

The proposed additions at the western elevation are offset from the adjoining dwelling and will not cause any notable privacy impacts.

At the eastern elevation, window W.06 is located over the kitchen bench at the ground floor level and the enlarged window W.10 and adjacent new deck service the master bedroom; given the orientation of the bedroom and deck to the north to access the available views, these areas not expected to cause any unreasonable overlooking of the adjoining property.

Based on the above assessment, the proposal is considered to comply with the control.

C1.14 Separately Accessible Structures

Description of Non-compliance

Controls

A separately accessible structure may be permitted for use as a studio, home office, workshop area, rumpus room and the like, provided that:

- i) it is ancillary to a dwelling;*
- ii) it is not designed for separate habitation and does not contain any cooking facilities.*

Variations

Where the purpose of the structure or its distance from the nearest bathroom facility dictates, bathroom/toilet facilities may be allowed.

Comment:

The proposal includes the addition of a new bathroom within the existing studio/home office, which is located some 27m from the dwelling.

Merit Consideration

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

- *Separately accessible structures that provide a recreational or office function for residents.*

Comment:

Consistent with the variations permitted provided under this control, the proposed outbuilding is used as a studio/home office and is located a significant distance from the dwelling. Given that the structure is not intended or designed to be used for separate habitation, the inclusion of bathroom facilities is reasonable in this case. A condition is included in the consent to ensure that no cooking facilities are contained within the structure and that it is not to be used for separate habitation.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the control.

Accordingly, this assessment finds that the proposal is **supported** in this particular circumstance.

D8.6 Side and rear building line

Description of Non-compliance

The control requires a 2.5m setback to one side boundary and 1m to the other. Given the siting of the existing dwelling, the 2.5m setback requirement has been assigned to the western boundary.

The proposed laundry, WC and store additions at the western elevation are non-compliant with the 2.5m requirement, with setbacks of between 1.0m and 1.2m.

Merit Consideration

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

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

Comment:

As assessed under PDCP A4.8, the proposal is found to be consistent with the desired future character of the locality.

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

Comment:

The proposed additions are generally consistent with the siting of the existing dwellings on the subject site and adjoining properties, and will not result in any adverse building bulk.

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

Comment:

The proposal is not anticipated to adversely impact any significant views or vistas.

- *To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.*

Comment:

As above, no views or vistas are expected to be impacted.

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

Comment:

As assessed under PDCP C1, a reasonable level of privacy, amenity and solar access will be maintained to the subject site and to the adjoining dwellings.

- *Substantial landscaping, a mature tree canopy and an attractive streetscape.*

Comment:

The proposal maintains all existing canopy trees on site and includes minimal impact to existing landscaping. The existing stair at the north-eastern corner of the site is to be

demolished and replaced with a new garden bed. The proposed WC addition to the studio/home office is set back from the street frontage and will not cause any adverse streetscape impact.

- *Flexibility in the siting of buildings and access.*

Comment:

The proposed works are considered to be appropriately sited to minimise the height and bulk of the dwelling and the potential visual and amenity impacts.

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

Comment:

No significant vegetation is proposed to be removed and the existing trees and landscaping will visually screen the development.

- *To ensure a landscaped buffer between commercial and residential zones is established.*

Comment:

Not applicable - the site does not adjoin and commercial zone.

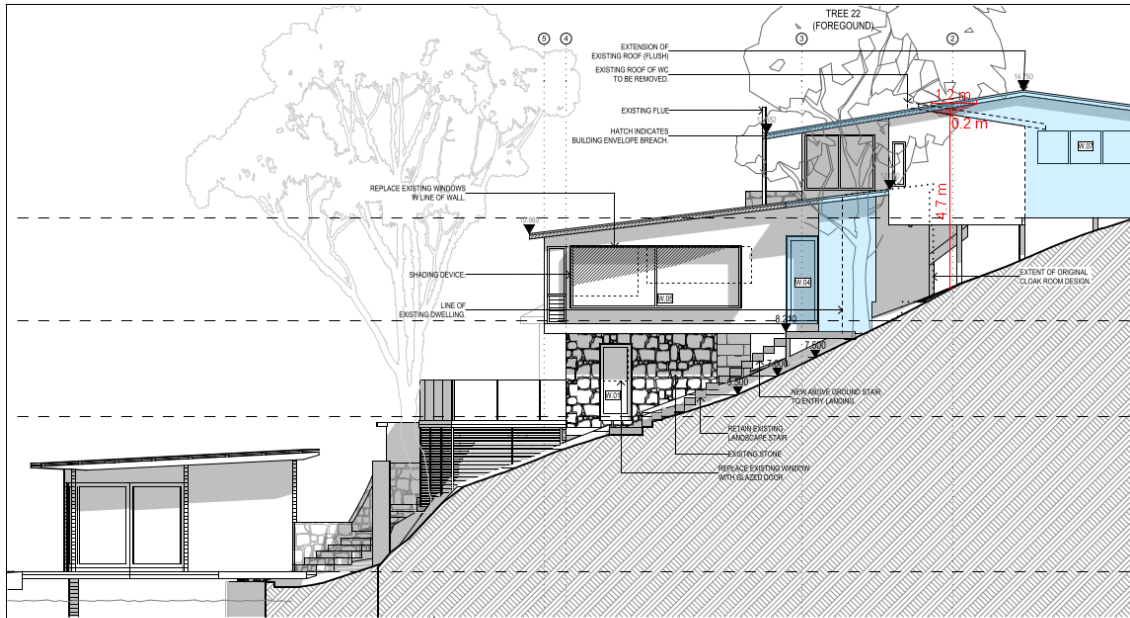
Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the control.

Accordingly, this assessment finds that the proposal is **supported** in this particular circumstance.

D8.8 Building envelope

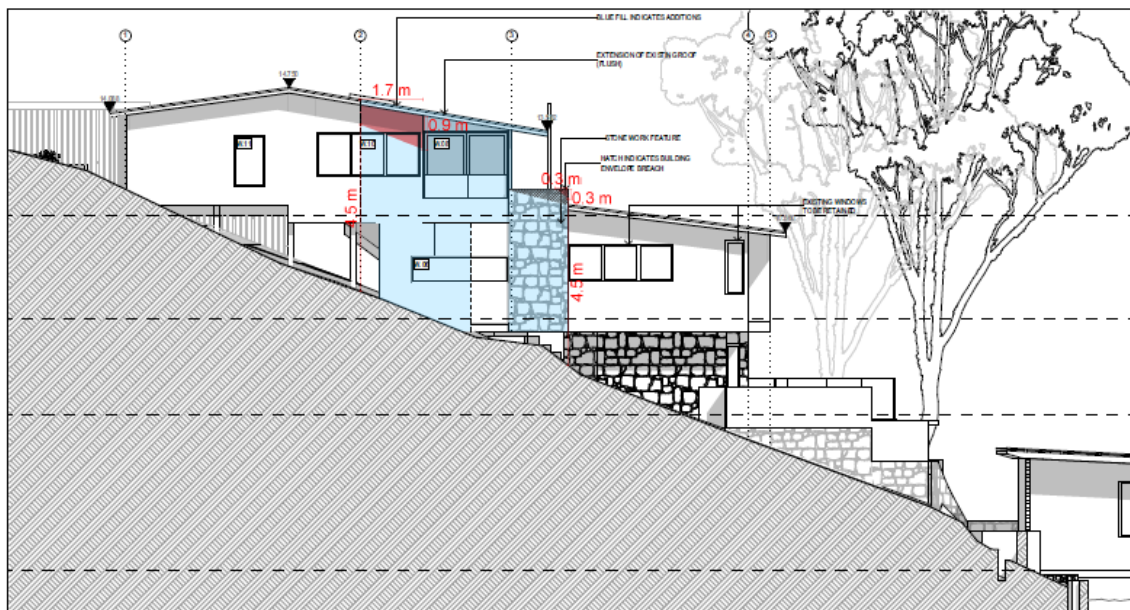
Description of Non-compliance

The proposal includes various breaches of the building envelope control at the eastern and western elevations, as depicted on the below plans.



 WEST ELEVATION

Plan 1. Western Elevation



 EAST ELEVATION

Plan 2. Eastern Elevation Merit Consideration

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

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

Comment:

As assessed under PDCP A4.8, the proposal is found to be consistent with 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 proposed additions are substantially set back from the street frontage and well-below the tree canopy.

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

Comment:

The proposed dwelling design responds to the topography, site context and natural environment.

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

Comment:

The proposed envelope breaches are minor and do not contribute to any excessive bulk and scale.

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

Comment:

The proposal is not anticipated to adversely impact any significant views or vistas.

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

Comment:

As assessed under P21 DCP (C1), a reasonable level of privacy, amenity and solar access will be maintained to the subject site and to the adjoining dwellings.

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

Comment:

No significant vegetation is proposed to be removed and the existing trees and landscaping will visually screen the development.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is **supported** in this particular circumstance.

D8.9 Landscaped Area

Description of Non-compliance

The control requires a landscaped area of 72% (569.1m²). The proposal includes a landscaped area of 67.1% (530.36m²), representing in a shortfall of 38.74m².

Variation (ii) to the control permits up to 6% of the total site area to be provided as impervious landscape treatments for outdoor recreational purposes, in circumstances where the outcomes of the control are achieved.

The below assessment finds that the proposal does achieve the outcomes of the control in this case.

Subsequently, the application of variation (ii) results in a compliant landscaped area of **73.1%** (577.8m²).

Merit Consideration

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

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

Comment:

As assessed under PDCP A4.8, the proposal is found to be consistent with the desired future character of the locality.

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

Comment:

The proposal exhibits adequate compliance with the applicable built form controls and successfully minimises the resulting bulk and scale.

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

Comment:

As assessed under PDCP C1, a reasonable level of privacy, amenity and solar access will be maintained to the subject site and to the adjoining dwellings.

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

Comment:

No significant vegetation is proposed to be removed and the existing trees and landscaping will visually screen the development. The retention of numerous canopy trees across the site ensures that the buildings appear secondary to the landscape.

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

Comment:

The site is considered capable of sufficient infiltration and capture of stormwater thus preventing soil erosion and siltation of natural drainage channels.

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

Comment:

The height of the dwelling remains significantly below the building height control and tree canopy, and the proposed additions ensure minimal impact to landscaped area and existing vegetation. The proposal responds appropriately to the topography, site constraints and surrounding character.

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

Comment:

As discussed above, the proposal will not result in the removal of any significant vegetation and therefore contributes to the effective management of biodiversity.

- *The area of site disturbance is minimised.*

Comment:

The proposal requires minimal excavation as the works are largely raised above the existing ground levels.

- *Soft surface is maximised.*

Comment:

The proposal provides adequate soft surface.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is **supported** in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$5,280 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$528,000.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify a contravention of Clause 7.8 Limited Development on Foreshore Area 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

The subject application seeks a review of Council's refusal of Development Application No. DA2022/1863 on the basis that insufficient information was provided in relation to the retention of an existing spotted gum.

The Review Application is supported by amended plans and additional information that satisfactorily address Council's previous concerns.

The key planning issues considered within the assessment are; the proposed FBL development standard variation and built form non-compliances.

The review proposal involves a Clause 4.6 variation request in relation to Clause 7.8 of the PLEP 2014, as the additions to the side of the existing dwelling now constitute an extension of the building footprint of the dwelling further into the Foreshore Area.

Notwithstanding the proposed variation, the development is not considered to result in any unreasonable impacts to the natural environment, public domain or adjoining properties.

Therefore, the Clause 4.6 variation is well founded and is supported.

No submissions were received in relation to the proposal.

The assessment of the application against the Pittwater LEP and DCP finds that the amended development has satisfactorily addressed the reasons for refusal of the development application.

Therefore, the reasons for refusal should no longer be maintained and the Panel should 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 the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to REV2023/0018 for Review of Determination of Application DA2022/1863 for alterations and additions to a dwelling house on land at Lot 119 DP 12749, 61 Robertson Road, SCOTLAND ISLAND, Lot LIC 556720, 61 Robertson Road, SCOTLAND ISLAND, 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
A01	G	Site Plan	Gartner Trovato Architects	21 September 2021
A02	G	Ground Level Plan	Gartner Trovato Architects	21 September 2021
A03	G	Level 1 Plan	Gartner Trovato Architects	21 September 2021
A04	G	Level 2 Plan	Gartner Trovato Architects	21 September 2021
A05	G	East + West Elevation	Gartner Trovato Architects	21 September 2021
A06	G	North + South Elevation	Gartner Trovato Architects	21 September 2021
A07	G	Section AA	Gartner Trovato Architects	21 September 2021
A08	G	Section BB	Gartner Trovato Architects	21 September 2021

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate A478714_02	-	Gartner Trovato Architects	31 July 2023

Bushfire Risk Assessment	-	Bush Fire Planning Services	8 August 2022
Report on Geotechnical Investigation	0	Crozier Geotechnical Consultants	9 September 2022
Ecological Assessment Report	-	ACS Environmental	5 April 2023
Arboricultural Impact Appraisal and Method Statement	A	Naturally Trees	29 March 2023

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

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

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

2. **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	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. **No Approval for Secondary Dwelling**

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

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

5. **General Requirements**

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
 - 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,

- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$5,280.00 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 \$528,000.00.

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

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

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

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

7. Security Bond

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

8. Stormwater Disposal from Low Level Property

The applicant is to demonstrate how stormwater from the new development within this consent shall be disposed of to an existing approved system or in accordance with Northern Beaches Council's Water Management for Development Policy in particular Section 5.5 Stormwater Drainage from Low Level Properties. Details demonstrating that the existing approved system can accommodate the additional flows or compliance with Northern Beaches Council's policy by an appropriately qualified Civil Engineer are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

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

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by Crozier Geotechnical Consultants dated 09.09.2022 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. 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. 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.

12. **Compliance with Standards**

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

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

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

13. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

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

14. **External Colours and Materials**

The external finished of the additions shall comprise dark and earthy tones in accordance with P21 DCP D8.3 Building Colours and Materials.

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

Reason: To ensure that the development compliments the surrounding natural environment.

15. **Waste Management Plan**

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

16. **Project Arborist**

a) 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 AS

4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

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

i) works and tree protection requirements under section 4 Arboricultural Method Statement, and Appendix 8 Tree Management Plan.

c) All tree protection measures specified must:

i) be in place before work commences on the site, and

ii) be maintained in good condition during the construction period, and

iii) remain in place for the duration of the construction works.

d) the Project Arborist shall provide certification to the Certifier that all tree protection measures under AS 4970-2009 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

17. 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 complaint to AS 4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.

18. 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.

19. 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.

20. **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.

21. **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.

22. **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.

23. **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.

24. **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.

25. **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.

26. **Property Boundary Levels**

The Applicant is to maintain the property boundary levels. No approval is granted for any change to existing property alignment levels to accommodate the development.

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

Reason: To maintain the existing profile of the nature strip/road reserve.

27. **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

28. **Condition of Retained Vegetation**

a) 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:

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

Reason: Tree and vegetation protection.

29. **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.

30. **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.

31. **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.

32. **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.

33. **No Impacts to native vegetation within Biodiversity Values Map**

Impacts to any native vegetation within the area mapped as Biodiversity Values Map will require an application for development consent which must be accompanied by a Biodiversity Development Assessment Report prepared by an ecologist accredited in application of the NSW Biodiversity Assessment Method, unless otherwise approved under an existing development consent, Local Land Services Native Vegetation Panel permit, or Threatened Species License.

Compliance is to be confirmed in writing by the Project Ecologist and provided to the Certifier prior to issue of any Occupation Certificate.

Reason: To ensure compliance with the Biodiversity Values Map threshold of the NSW Biodiversity Offsets Scheme

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

34. **Landscape Maintenance**

a) 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.

35. **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.

36. **Geotechnical Recommendations**

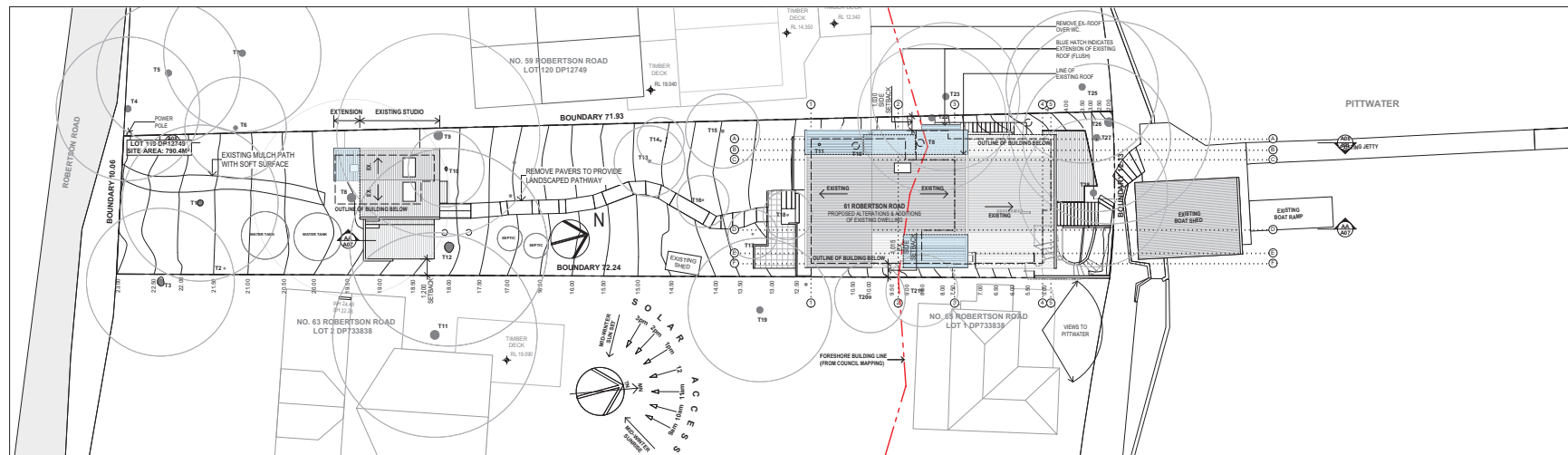
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

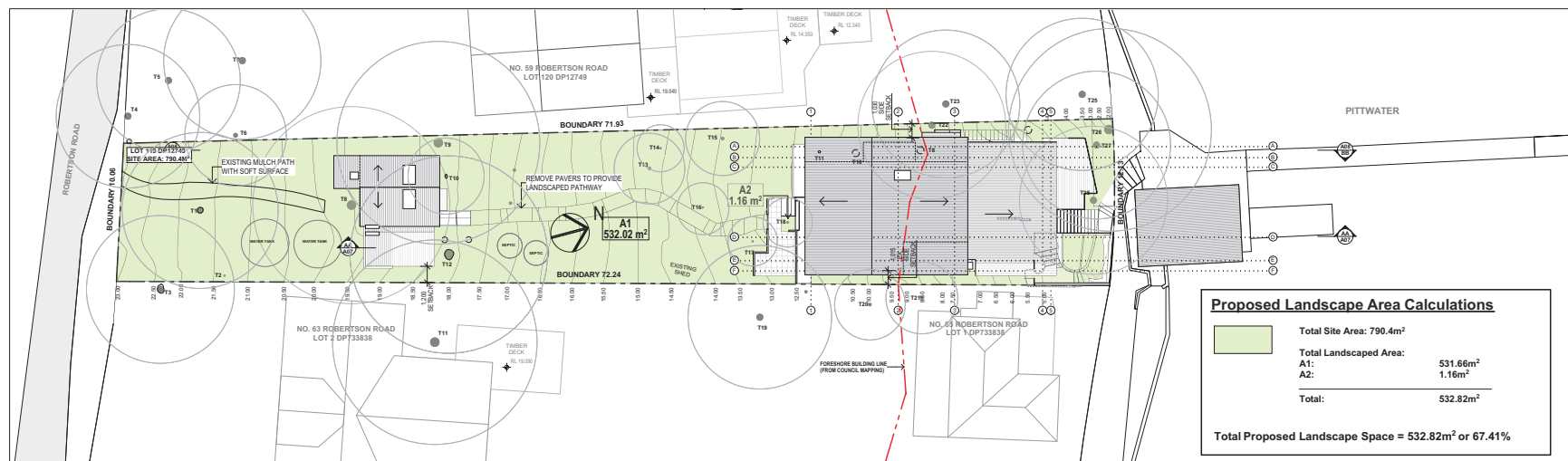
37. **No impact to native vegetation within Biodiversity Values Map**

Impacts to any native vegetation within the area mapped as Biodiversity Values Map will require an application for development consent which must be accompanied by a Biodiversity Development Assessment Report prepared by an ecologist accredited in application of the NSW Biodiversity Assessment Method, unless otherwise approved under an existing development consent, Local Land Services Native Vegetation Panel permit, or Threatened Species License.

Reason: To ensure compliance with the Biodiversity Values Map threshold of the NSW Biodiversity Offsets Scheme

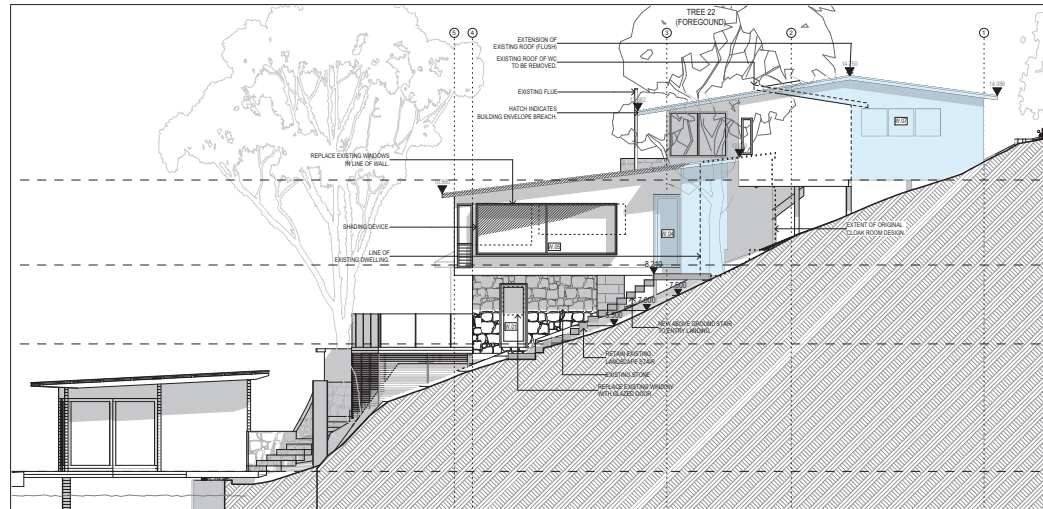


SITE PLAN

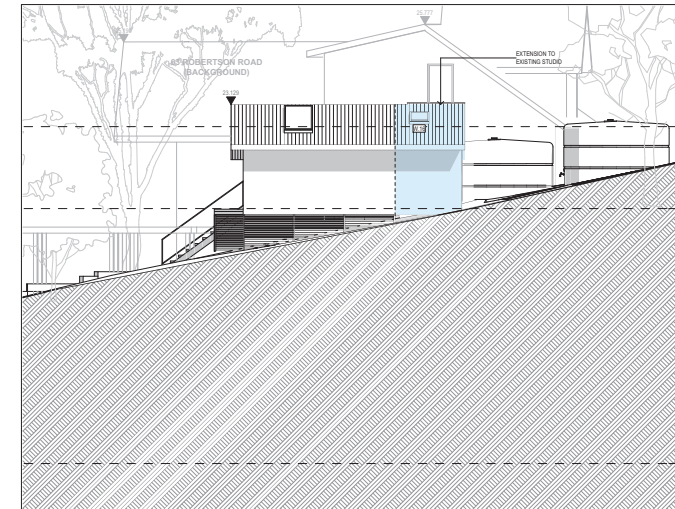


LANDSCAPE CALCULATIONS

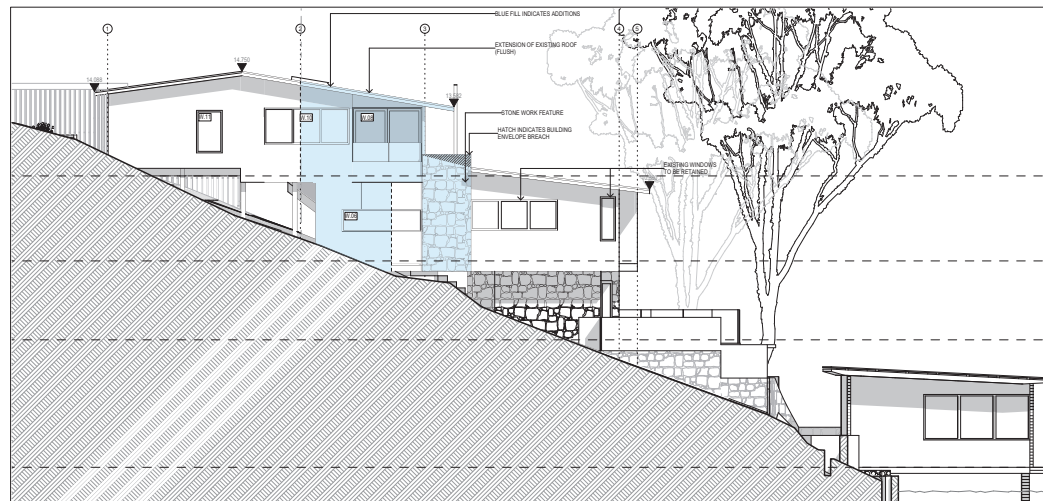
<p>GARTNERTROVATO ARCHITECTS</p> <p>A: 4/700 HERRIS VALLEY ROAD PO BOX 1100 HERRIS VALLEY NSW 2110 P: 02 9079 4411 F: 02 9079 4400 M: 02 9079 4400</p>	Issue Date	Rev	Description	Drawn	Checked	PROJECT	EXHIBIT TITLE
	30/08/2022	A	DEVELOPMENT APPLICATION	A	A	Lauchlan Residence	SITE PLAN & LANDSCAPE CALCULATIONS
	17/01/2023	B	DA REVISIONS	B	B	Alterations & Additions	61 Robertson Road Scotland Island
	16/03/2023	C	DA REVISIONS	C	C	LOT 119 DP 12749	SCALE
	28/03/2023	D	GENERAL REVISIONS TO DA	D	D		1:200 @ A2
	28/08/2023	F	REVISION OF CELLAR + CLOAK ROOM	F	F	FOR C = J LAUHLAN	PROJECT NO. 2205
	21/09/2023	G	DA REVISIONS FOR COUNCIL	G	G		DATE 21/09/2023
							SCALE A01
							REVISIONS



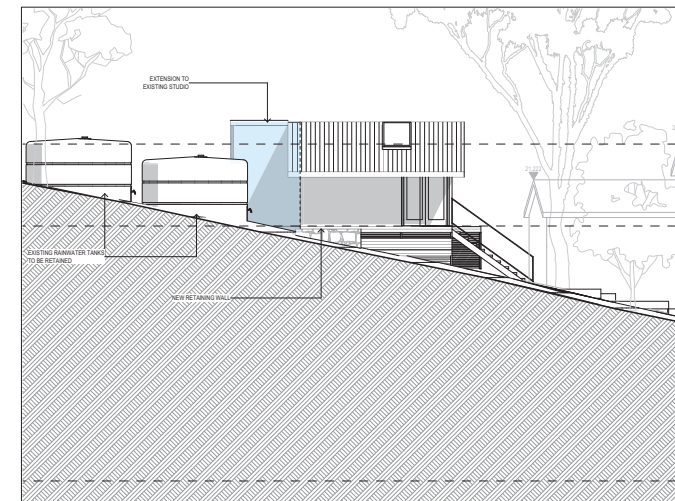
WEST ELEVATION



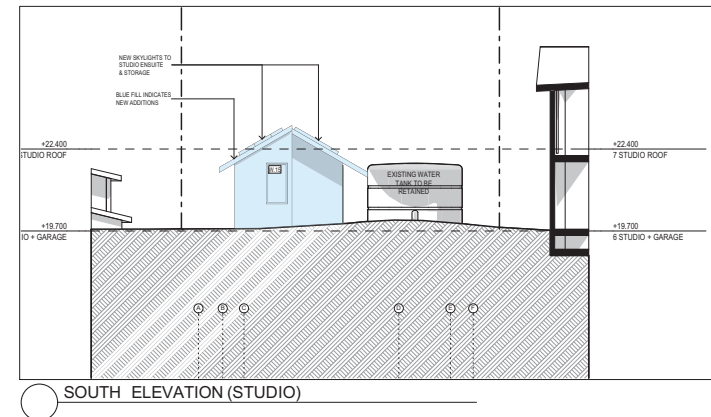
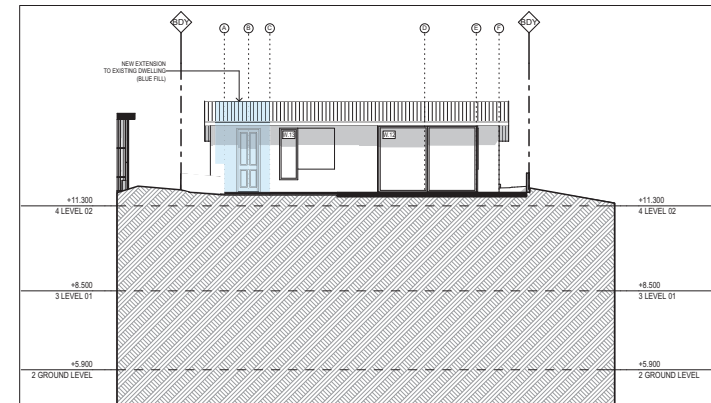
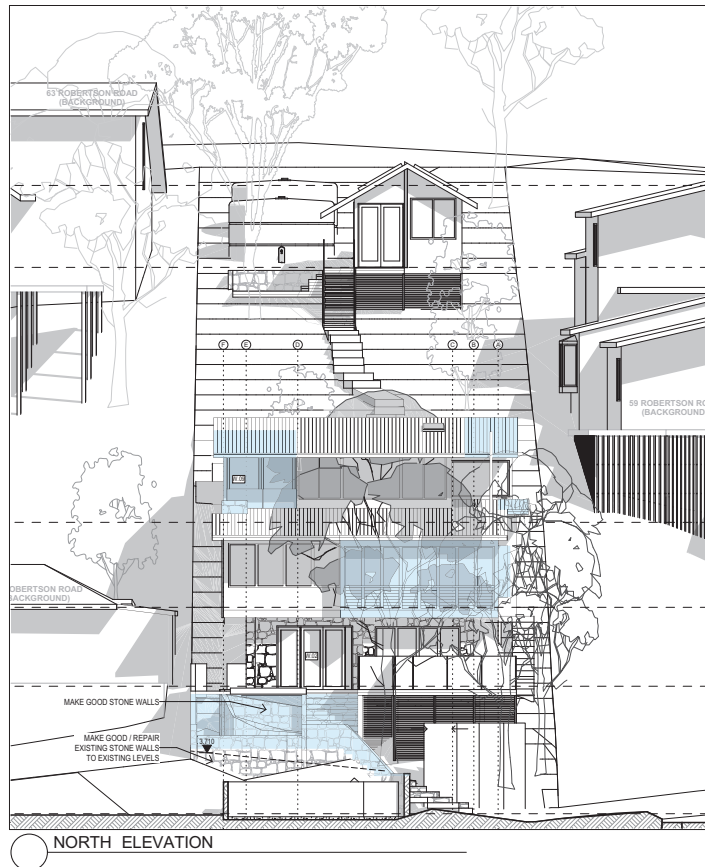
WEST ELEVATION (STUDIO)



EAST ELEVATION



EAST ELEVATION (STUDIO)



Clause 4.6 Variation to a Development Standard



Alterations & Additions to an Existing Dwelling @

61 Robertson Road, Scotland Island

Prepared For C & J Lauchlan



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Luke Trovato # 7094

project no	2205
date	September 2023
issue	A

1.0 INTRODUCTION

This request to vary a development standard has been prepared on behalf of C & J Lachlan, owners of the property at 61 Robertson Road, Scotland Island in relation to a development application for alterations and additions to an existing dwelling at the property.

This request is made pursuant to clause 4.6 of Pittwater Local Environmental Plan (PLEP 2014) and with regard to relevant case law.

2.0 STANDARD TO BE VARIED

The standard in the PLEP 2014 that is proposed to be varied, is Clause 7.8 Limited Development on Foreshore Area.

Part (1) of the clause provides the objectives as follows:

- a) *to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area,*
- b) *to ensure continuous public access along the foreshore area and to the waterway.*

The proposal achieves the objectives. The proposed development is set back significantly from the foreshore and behind the existing building line, and as such ensures continuous public access along the foreshore and ensures that the development will not impact upon the processes or amenity of the foreshore area.

Part (2) of the clause states, *Development consent must not be granted for development on land in the foreshore area except for the following purposes—*

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

The proposal contains only building elements within the foreshore area that are classified as elements that fall within the exceptions above being:

- Alteration of an existing building partly in the foreshore area
- Extension of an existing building partly within the foreshore area
- None of the proposed works will result in the footprint of the building extending further into the foreshore area

Parts (3) and (4) are dealt with later in this report.

Part (5) of this clause provides the following definitions:

foreshore area means the land between the foreshore building line and the mean high water mark of the nearest natural waterbody shown on the [Foreshore Building Line Map](#).

foreshore building line means the line shown as the foreshore building line on the [Foreshore Building Line Map](#).

An extract relevant to this application of The Foreshore Building Line Map extract is shown below, with the *foreshore building line* shown in Red. The line is indicated as passing through the existing neighbouring dwelling for reference, as the subject site dwelling is masked by tree canopy cover.



The foreshore area control is a fixed standard relating to the siting of buildings on a site, consistent with the definition of a development standard, as defined by the EP&A Act. As such, the provisions of clause 4.6 of PLEP 2014 can be applied.

Pursuant to clause 4.6(2) of PLEP 2014, consent may be granted for development even though the proposal contravenes a development standard prescribed by an environmental planning instrument. Whilst this clause does not apply to those standards expressly excluded from this clause, the foreshore building line development standard of clause 7.8 of PLEP 2014 is not expressly excluded and thus, the provisions of clause 4.6 can be applied in this instance.

3.0 EXTENT OF THE PROPOSED BREACH

The application seeks consent for new work, rebuilding existing and variation to existing structures within the foreshore area, including,

- Rebuilding/alteration of an existing dwelling partly in the foreshore area. The proposed works seek to revise the internal layout of the dwelling on the mid floor level (Level 1) within the existing footprint to towards the foreshore. The proposal retains the external facades and roof, with replacement of the western windows in the existing wall (shown in Figure 1 below)
- Extension of an existing building partly in the foreshore area. The proposed works seek to add a storeroom at the rear of the foreshore elevation and increase the area of the kitchen to the rear of the existing dwelling at Level 1, and to increase bed 1 at Level 2 in a sideways direction, plus a deck.

The proposed works are represented in Figure 1 and 2 below as highlighted in blue.

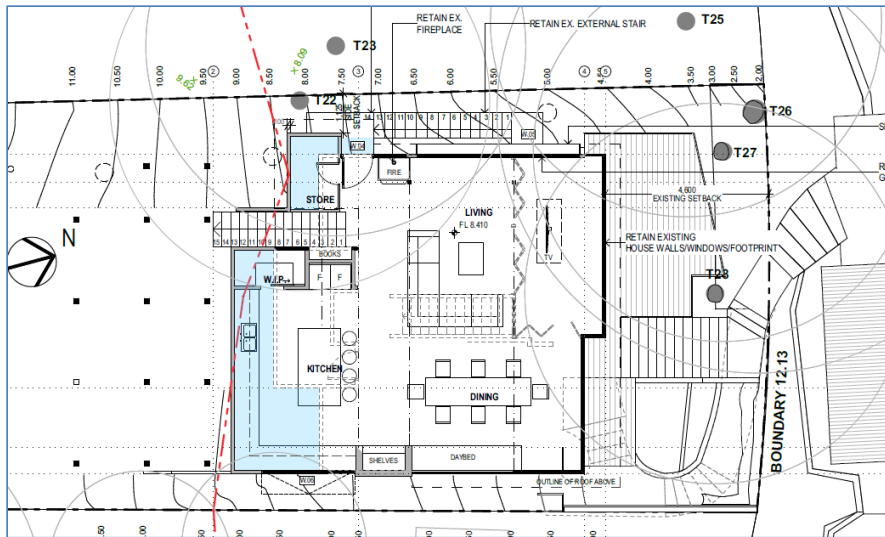
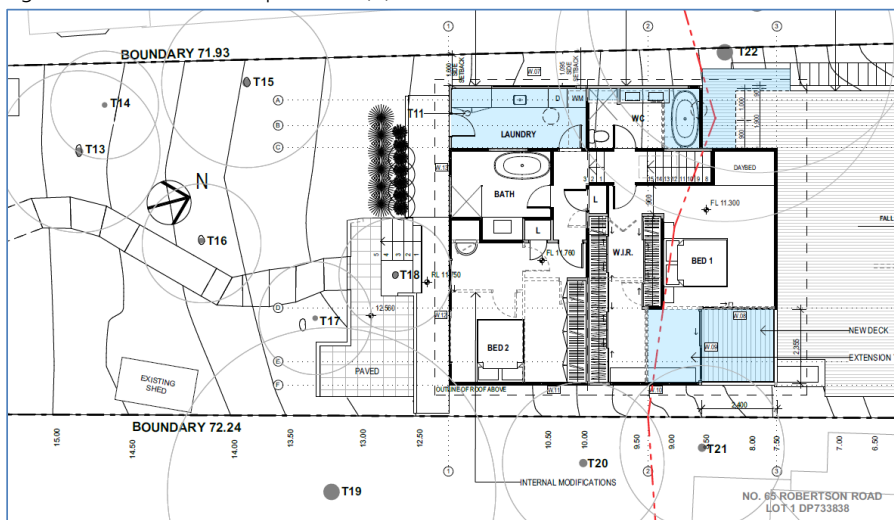


Figure 1. Extract of Level 1 plan, A03 (G)

Figure 2. Extract of Level 2 plan, A04 (G)



In accordance with the provisions of clause 7.8(2)(a) of PLEP 2014, the rebuilding of an existing building partly within the foreshore area is permitted but only if the new work does not result in the footprint of the building extending further into the foreshore area. The proposed works on Levels 1 and 2 are setback behind or generally within the existing building footprint and do not extend further into the foreshore area compared to the existing building. As such, we submit that these new structures are permitted within the foreshore area and a variation request is justified in relation to these works under part 2.

Should council consider that the rebuilding of the building within the existing building footprint does not classify as a variation under the provisions of clause 7.8(2)(a) of PLEP 2014, then the extent of new development forward of the foreshore building line that is the subject of this clause 4.6 request is limited to the extremely small areas of the dwelling as described above.

4.0 CLAUSE 4.6 – EXCEPTIONS TO DEVELOPMENT STANDARDS

The objectives of Clause 4.6 are:

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

Reference is drawn to the court precedent of *Initial Action* where the conclusion was that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operation provisions.

Pursuant to clause 4.6(2) consent may...*"subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause"*.

This clause applies to the clause 7.8 Limited Development on Foreshore Area.

Clause 4.6(3) states that... *"consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

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

The proposed development seeks works within the foreshore area and it is submitted that those works fall within the variations of Clause 7.8 part 2, a), however for any other consideration, strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Clause 4.6(4) states....."consent must not be granted for development that contravenes a development standard unless:

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

Reference is drawn to *Initial Action* for 4.6a(i), where the test of unreasonable or unnecessary, and sufficient environmental planning grounds, are dealt with below in section 5 of this report.

Reference is further drawn to *Initial Action* for 4.6a(ii), where the proposed development will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development in the zone, also dealt with in section 5 of this report.

In terms of satisfying clause 4.6 (4)b), we refer to section 5 of this report.

The remaining clauses 4.6 (5) through (8) are not relevant to this application.

5.0 REQUEST FOR VARIATION

Unreasonable or Unnecessary

Clause 4.6 (3)a) requires demonstration that compliance with the development standard is unreasonable or unnecessary in the circumstance.

In accordance with the decision of the NSW LEC in the matter of *Wehbe v Pittwater Council* [2007] NSWLEC 827, one way in which strict compliance with a development standard may be found to be unreasonable or unnecessary is if it can be demonstrated that the objectives of the standard are achieved, despite non-compliance with the development standard.

The proposed development is consistent with the objectives of the foreshore building line development standard, as prescribed by clause 7.8(1) of PLEP 2014, as follows:

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

Comment: No element of the proposed works will impact on the natural foreshore processes as the works are setback significantly both from the foreshore and the existing building line. The additions will have no impact on the current interface to the foreshore.

The works will not impact upon the significance and amenity of the area. The proposed works are setback in excess of 7.5m behind the existing building line and approximately 12m from the foreshore boundary. The additions to not increase building height, are suspended above ground and are

generally within the existing footprint. Further detail is provided in the justification of environmental planning grounds later in this report.

The replacement of the stone stair access is at ground level and has no impact on foreshore processes or amenity, and does not require any tree removal or loss of landscape amenity.

All proposed structures are well above the Estuarine Planning Level, ensuring that there will be no impact upon tidal processes and wave action. Further, the works have been reviewed with respect to the geotechnical hazard that affects the foreshore area, with certification that the works can be undertaken to avoid unacceptable risk to the foreshore.

The objective is satisfied notwithstanding the variations clause, for works within the foreshore area.

2. *to ensure continuous public access along the foreshore area and to the waterway.*

Comment: The works are maintained wholly within private property and do not impact upon public access along the foreshore. The works are set back from the waters edge and are elevated well above the natural tidal zone and the levelled foreshore area of the subject site.

The consent authority can be satisfied that the proposed development achieves this objective.

As such, strict compliance with the foreshore building line development standard is unreasonable and unnecessary in the circumstances of this case.

Sufficient Environmental Planning Grounds

Clause 4.6 (3)b requires demonstration that there are sufficient environmental planning grounds to justify contravention of the standard. These grounds are as follows:

1. Characterisation of development

The proposed development contains only elements that are within the variations clause of the standard and those works will provide compliance with the objectives of the standard.

2. Minor nature of breach

As demonstrated in Figures 1 & 2 (above) the extent of the breach associated with the proposed additions to the dwelling are extremely minor and is limited to less than 1% foreshore area.

The proposed new structures do not give rise to any unreasonable impacts upon the amenity of adjoining sites or the wider public domain as the proposed works are set back further from the foreshore than the existing dwelling. The non-compliance will not be readily perceived from the waterway, with sufficient spatial separation and landscaping retained and enhanced forward/seaward of the dwelling house, within the foreshore area.

The proposed development responds appropriately to the circumstances and the individual context of the site, including the siting & levels of the existing dwelling and proposed additions to the dwelling, and promotes good design and amenity of the built environment, and the proper construction and maintenance of buildings,

including the protection of the health and safety of their occupants, consistent with objects (g) and (h) of the EP&A Act.

Furthermore, allowing for a variation to the foreshore building line that arises as a result of the need/desire to more readily comply with the provisions of Council's DCP promotes the orderly and economic development of the land, consistent with object (c) of the EP&A Act.

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

Overall, there are sufficient environmental planning grounds to justify contravention of the foreshore building line development standard in this particular instance

Public Interest

Clause 4.6 (4)a) requires that consent must not be granted to a proposal that contravenes a development standard unless the proposed development will be in the public interest. A development can be considered in the public interest if it is consistent with the objectives of the particular standard to be varied and the objectives of the zone.

As identified above, the proposed development is consistent with the objectives of the foreshore building line development standard. The following commentary demonstrates that the development is also consistent with the objectives of the C4 zone:

- *to provide for low-impact residential development in areas with special ecological, scientific or aesthetic values*
Comment: The proposal is low impact, compliant with building height and in a landscaped setting. There are no identified special values to the site. The proposal achieves this objective.
- *To ensure that residential development does not have an adverse effect on those values*
Comment: The proposed alterations and additions to the existing dwelling will not impact the values of the area.
- *To provide for residential development of a low density and scale integrated with the landform and landscape.*
Comment: The proposal will retain the low density character with a single dwelling below the tree canopy. The scale of the dwelling is entirely consistent with the landforms and adjoining development and landscape.
- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*
Comment: The proposal removes retain all trees and landscape areas fronting the foreshore and achieves this objective.

Council can be satisfied that the proposal is in the public's interest, in so far as it is consistent with both the objectives of the zone and the objectives of the Limited Development in the Foreshore Area.

Secretary's Concurrence

Pursuant to clause 4.6(4) of PLEP 2014, development consent must not be granted to a development that contravenes a development standard unless the concurrence of the Secretary has been obtained.

Council has advised that the foreshore building line development standard is a non-numeric development standard. In accordance with the Local Planning Panels Direction issued by the Minister for Planning and Public Spaces, dated 30 June 2020, the concurrence of the Secretary can be assumed by the Northern Beaches Local Planning Panel.

6.0 CONCLUSION

Overall, the consent authority can be satisfied that this written request has adequately addressed all relevant matters and that the provisions of clause 4.6 of PLEP 2014 have been met. As such, there is no jurisdictional impediment to the granting of consent in relation to the proposed breach of the foreshore building line development standard.



Sean Gartner

B.Arch | Registered Architect #6072 (BoA, NSW)

Director

Gartner Trovato Architects Pty Ltd

ITEM 5.2**DA2023/0325 - 9 EUSTACE STREET, MANLY - ALTERATIONS
AND ADDITIONS TO A RESIDENTIAL FLAT BUILDING****AUTHORISING MANAGER**

Adam Richardson

TRIM FILE REF

2023/626207

ATTACHMENTS

- 1 [↓ Assessment Report](#)
- 2 [↓ Site Plan & Elevations](#)
- 3 [↓ Clause 4.6](#)
- 4 [↓ SEPP 65](#)

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is a development to which *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development* applies.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2023/0325 for alterations and additions to a residential flat building on land at Lot CP SP 31425, 9 Eustace Street, MANLY subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0325
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Responsible Officer:	Alex Keller
Land to be developed (Address):	Lot CP SP 31425, 9 Eustace Street MANLY NSW 2095
Proposed Development:	Alterations and additions to a residential flat building
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Proprietors of Strata Plan 31425
Applicant:	Cradle Design

Application Lodged:	14/04/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	24/04/2023 to 08/05/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 7.2%
Recommendation:	Approval

Estimated Cost of Works:	\$ 507,070.00
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EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to an existing residential flat building with the works generally consisting of remedial building works as well as works which improve access and safety of the building, along with some modernisation to the building external appearance and function.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to the development being alterations and additions to a residential flat building to which SEPP 65 applies.

During the notification period, no objections to the development were received.

The extent of work results in a minor height variation which is attributed to the existing basement. In

support of this height variation.

A written Clause 4.6 written request has been provided which argues that the enclosure of an existing external staircase results in a 7.2% variation to the height standard (0.8 metres above the 11 metres maximum building height), which is attributable to the existing excavated basement carpark or existing ground level. The new stair roof is attached to the existing main roof profile and does not result in adverse amenity impacts (shadowing, views, bulk etc) within or to adjacent dwellings.

Critical assessment issues included predominantly relate to minor changes to the rear fence line at the rear along Tower Hill reserve heritage consideration / public interface for which a conditions are recommended.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks approval for alterations and additions to a residential flat building:

Part demolition, preparation and ancillary site works.

Level One

- New mailboxes for each unit, a portion of new louvre wall screening to the northern side and louvre screening to the rear extent of the existing staircase.
- Rectification of retaining walls at the rear with a new stormwater pit representing the connection between the new portion of the stormwater system.

Level Two

- New glass roof to the proposed entry pergola, aluminium louvre screening to the northern boundary of the Unit 1 and 2 northern courtyards.
- New aluminium louvre screening to staircase 3 on the northern side, and
- New aluminium louvre screening surrounding staircase 4 at the rear of the site.

Level Three

- New roofing over staircase 3, new balustrading and balcony tiles to the balconies of Units 6 and 7,
- New privacy screening to the southern balcony of Unit 7, and
- New aluminium louvre screening to staircase four at the rear.
- A new stormwater drainage system is also proposed at the rear

Level Four

- New aluminium board cladding to the external face of southern parapet wall, new balustrading and tiling to the northern balcony,
- New aluminium louvre screening to staircase four,

- Replace staircase at the rear as well as associated stair landing and security gate between site and council park,
- New rear boundary fencing.
- Stabilisation of retaining walls and stormwater works to the rear.

Ancillary works:

- Private open space areas will maintained as existing, with some balconies undergoing cosmetic upgrades (tiling, balustrading). New balustrade work is less than 1.4m above floor level and stair screens permit wind sunlight through louvres therefore no FSR change.
- New louvre screening to the open spaces of Units 1 and 2.



Figure 1: New materials and colour scheme for building includes painting, cladding, fencing and screens.

ASSESSMENT INTRODUCTION

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

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping

SITE DESCRIPTION

Property Description:	Lot CP SP 31425 , 9 Eustace Street MANLY NSW 2095
Detailed Site Description:	<p>The subject site is on the western side of Eustace Street between West Esplanade and Sydney Road. The surveyed site area is 697.4m² for the land area and the site contains a Strata Title residential flat building containing 8 Units.</p> <p>The site falls from west to east. The existing building sits above a basement car park and steps up from Eustace Street to a public reserve behind.</p> <p>The surrounding neighbourhood is a mix of multi-residential apartments and mixed use development of varying heights, generally from 3 to 5 storeys.</p> <p>Manly wharf and foreshore are within 100 metres south of the property, Manly oval to the north and Manly CBD to the east. The west boundary is Council reserve parkland with pathway connections to Rowe Street and Tower Street. No.9 Eustace has a back-gate access from the public footpath.</p> <p>Vehicular and pedestrian access is currently via Eustace with the existing driveway running perpendicular to Eustace Street. The main pedestrian entry is located on the front boundary.</p>

Map:



SITE HISTORY

Development Application No.DA3814/90 for alterations and additions to a residential flat building was approved by Council on 24 May 1990.

Development Application No.DA0039/2012 for alterations and additions to a residential flat building (Unit 3) was approved by Council on 13 April 2012.

Development Application No.DA0241/2016 for alterations and additions to a residential flat building (Unit 7) was approved by Council on 28 September 2016.

Development Application No.DA2021/2409 for alterations and additions to a residential flat building was approved by the Northern Beaches Local Planning Panel on the 20 April 2022.

Modification Application No.MOD2022/0603 to modify consent No.DA2021/2409 granted alterations and additions to a residential flat building. This application reduced the scope works to Unit 1 (no longer increasing floor space) and was approved by Council on 7 November 2022. This modification also sought to resolve to adjust Section 94A costs (reduced CIV) and resolve fire safety complications with BCA related matters / conditions.

Modification Application No.Mod2022/0735 to modify consent No.2021/2409 granted for alterations and additions to a residential flat building. This application sought minor amendments works and addition of required balcony safety upgrades and was approved on 30.3.2023.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(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 recommended 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 documentation has been submitted.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to 'clause 4.6' height variation for the new stair roof and cladding that is above the 11m height line. The applicant provided this information to accompany the SEE.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a recommended condition of consent.</p> <p><u>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 and some of the works are associated with fire upgrades to the building.</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 recommended condition</p>

Section 4.15 Matters for Consideration	Comments
	of consent and some of the works as associated with BCA upgrades / renovation work, including remedial BCA work.
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. The works will improve the longevity of the building and internal safety and amenity. The new cladding work and structures do not create any unreasonable impact on neighbouring land, subject to recommended conditions.</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 24/04/2023 to 08/05/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments					
Building Assessment - Fire and Disability upgrades	<p>Supported subject to conditions</p> <p>The application has been investigated with respects to aspects relevant to 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 Building Code of Australia (BCA) and the Premises Standards. Issues such as this however may be determined at <i>Construction Certificate</i> Stage.</p>					
NECC (Development Engineering)	<p>Supported subject to conditions</p> <p>The subject site is flood affected and as such onsite stormwater detention (OSD) is not required and connection of stormwater to the existing system is acceptable.</p> <p>The proposal includes the removal of an existing stair access at the rear which access a public path within a reserve. This aspect must be assessed and conditioned by Council's Parks and Reserves Team to determine the necessary approvals and permits that are required for these works.</p> <p>Development Engineering support the proposal, subject to conditions as recommended.</p>					
NECC (Flooding)	<p>Supported without conditions</p> <p>The front yard of the property is affected by the Medium Flood Risk Precinct. The proposed works are outside of flood affected area and are all above the Flood Planning Level.</p> <p>No flood related objections or conditions.</p>					
Strategic and Place Planning (Heritage Officer)	<p>Supported with 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 adjoins a heritage item and in the vicinity of a heritage item: Item I1237 - Reserve Park - Tower Reserve, Tower Hill Item I253 - Uniting Church - 4 West Promenade</td></tr><tr><th>Details of heritage items affected</th></tr><tr><td>Item I1237 - Reserve Park <u>Statement of significance:</u> Land used for early viewing point over Manly. Location of Camera obscura. Part of natural landscape together with Fig plantings. <u>Physical description:</u> Elevated land with extensive sandstone rock outcrop with some</td></tr></table>	HERITAGE COMMENTS	Discussion of reason for referral	The proposal has been referred to Heritage as the subject site adjoins a heritage item and in the vicinity of a heritage item: Item I1237 - Reserve Park - Tower Reserve, Tower Hill Item I253 - Uniting Church - 4 West Promenade	Details of heritage items affected	Item I1237 - Reserve Park <u>Statement of significance:</u> Land used for early viewing point over Manly. Location of Camera obscura. Part of natural landscape together with Fig plantings. <u>Physical description:</u> Elevated land with extensive sandstone rock outcrop with some
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Internal Referral Body	Comments		
	<p>indigenous plants retained and 1880's plantings of Port Jackson Figs (<i>Ficus Rubiginosa</i>). Historically significant viewing point, natural rocks and cultural plantings.</p> <p>Item II253 - Uniting Church <u>Statement of significance:</u> Prominent part of a unified group of 1920s and 1930s buildings (3-8 West Promenade), the church is a significant landmark building forming a significant backdrop to Gilbert Park. <u>Physical description:</u> A dark brick Inter-War Romanesque style church with 3 entry doors with arched leadlight fanlights, a 4 storey spire with arched leadlight windows and arched vents, a copper dome and copper finial. Side windows are also arched and either stained glass or leadlight. Internally, the church ceiling is panelled, decorative, and has a central vault. The timber floor is raked towards the pulpit. The two storey church hall at the rear continues the Inter War Romanesque style. The whole building is an integrated whole, built at the one time.</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	N/A	
	Consideration of Application		
	<p>The proposal seeks consent for substantial works to the external appearance of the building including painting, new balcony balustrades, a new entrance pergola, new staircase roofs, privacy louvres and rear fence adjoining Tower Hill Park. The Uniting Church hall is located opposite the site across Eustace Street, however the works to the building are considered to not impact upon this item or their significance due to the separation afforded by the roadway. The proposal also proposes to remove the existing rear staircase that encroaches into Tower Hill Park and replace it with a new landing and staircase within the property and a new fence at 2.1m high. However, the details of the fence is not specified in the documents.</p> <p>Heritage will condition the height of the rear fence and its materials and colours to ensure it appropriately addresses the heritage</p>		

Internal Referral Body	Comments
	<p>reserve.</p> <p>Therefore Heritage raises no objections to the proposal but requires one condition relating to the rear fence.</p> <p>Consider against the provisions of CL5.10 of WLEP.</p> <p>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</p> <p><u>Planning Comment:</u> Similar concerns about the excessive height of the rear fence are raised by planning pursuant to visual amenity impacts on the surrounding setting, and works for safety and security need only be sufficient to define the property zone given the steepness of the land. A height of 1.2m for the paling fence and 1.5m for the gate will provide adequate safety and security.</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 on 24.4.2023 stating that the proposal is acceptable subject to compliance with the relevant <i>Ausgrid Network Standards</i> and <i>SafeWork NSW Codes of Practice</i>. These recommendations will be included as a condition of consent.</p>
Aboriginal Heritage Office	<p><i>Supported, subject to conditions</i></p> <p>The proposal has been referred to Council's AHO and a referral response was provided on 28.7.2023 with advisory conditions to be included with the recommended condition with no objection to the proposed works.</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 65 - Design Quality of Residential Apartment Development

The development is required to comply with SEPP 65, and the associated Apartment Design Guide (ADG) provides additional details and guidance for applying the nine design quality principles outlined in SEPP.

As per the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP are applicable to the assessment of this application.

As previously outlined within this report Clause 29 of the EP&A Regulation 2021 requires the submission of a Design Verification Statement from the building designer at lodgement of the development application. This documentation has been submitted.

Clause 28 of SEPP requires that in determining a development application for consent to carry out development to which SEPP 65 applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):

- a. The advice (if any) obtained from the design review panel, and
- b. The design quality of the development when evaluated in accordance with the design quality principles, and
- c. The ADG.

DESIGN & SUSTAINABILITY ADVISORY REVIEW PANEL

The development application relates to minor elements and internal components that do not warrant referral to the DSAP.

DESIGN QUALITY PRINCIPLES

Principle 1: Context and Neighbourhood Character

Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.

Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

Comment

The site is located within the Manly Town Centre as defined by the Manly Local Environmental Plan 2013.

Contextually, the site is within the historic core of the established urban area of Manly. The site is surrounded by apartment buildings to the east, west and south along Eustace Street. Only a few single dwelling houses remain in the street or close to the site.

The alterations and additions to the building are considered to be appropriate to this context as it

makes only subtle changes to a selected elements of the building internal areas that are mostly not visible to the public domain. The overall appearance of the building is substantially the same with building construction dating from the 1970-80's style in a yellow brick and concrete form. The street contains a range of older historic apartment buildings as well as some new contemporary shop top housing. The owners of the Strata Scheme are in progress of a separate development application for upgrade works.

Accordingly, it is considered that alterations and additions proposed satisfy this principle.

Principle 2: Built Form and Scale

Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.

Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

Comment:

The main proportions, transitions, structural materials and main aspects of the built form roof and footprint are maintained. The facades of the building retain a similar overall outline (with a new colour scheme) and do not adversely impact adjacent land or access to the building or basement. The proposed alterations to the building improve its setting and built form.

Accordingly, it is considered that alterations and additions proposed satisfy this principle.

Principle 3: Density

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.

Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

Comment

The existing residential building provides medium density urban housing and comprises eight (8) apartments. The density of the development is considered sustainable within the existing availability of infrastructure, public transport, community facilities, and environmental qualities of the site.

Accordingly, it is considered that the proposal satisfies this principle.

Principle 4: Sustainability

Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials, and deep soil zones for groundwater recharge and vegetation.

Comment

It is considered that the development adequately incorporates sustainability measures that are commensurate with its setting.

Accordingly, it is considered that the proposal satisfies this principle.

Principle 5: Landscape

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, coordinating water and soil management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long term management.

Comment

The proposal maintains the existing landscape scheme which responds to the streetscape through the provision of a landscaped podium edge facing Eustace Street and landscaping of the site at the rear of the existing building. The building has generous upper and lower courtyards positioned to flow from primary living spaces and take advantage of available solar access along the side setbacks.

Accordingly, it is considered that the proposal satisfies this principle.

Principle 6: Amenity

Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.

Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all age groups and degrees of mobility.

Comment

The development provides a high level of amenity both internally and externally.

Given the challenge of the shape of the site / older style building format and its location, the application does not adversely impact the approved room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space is appropriate for the age of the building and the occupancy.

Accordingly, it is considered that the proposal satisfies this principle.

Principle 7: Safety

Good design optimises safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.

A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location

and purpose.

Comment

The design satisfies the principles of CPTED and includes a positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose, with suitable weather protection.

Generally, the development provides secure access which is separated from vehicular access points.

Accordingly, it is considered that the proposal satisfies this principle.

Principle 8: Housing Diversity and Social Interaction

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.

Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents.

Comment

The existing mix of apartment sizes in this location is considered reasonable due to the site's close proximity to Manly CBD and being within walking distance to the beach and public amenities and facilities in the local area. The building contains a mixture of apartments and the proposed work seek to modernise the building, and improve access and safety by generally remedial works and some minor building renovations (including drainage and general property improvements) to increase the longevity of the building.

Accordingly, it is considered that the proposal satisfies this principle.

Principle 9: Aesthetics

Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.

The visual appearance of well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

Comment

All materials selected will be durable and hard wearing so the development does not prematurely age. This will enhance the long-term image of the building with its careful composition of building elements, textures, materials, colours, internal design, and structure contributing positively to the building character. Aesthetically the alterations and additions will assist to improve the building and the internal livability since the styling and appearance / design of the building substantially pre-dates the ADG and SEPP 65.



Figure 2 - proposed materiality of the altered building.

APARTMENT DESIGN GUIDE

The following table is an assessment against the criteria of the 'Apartment Design Guide' as required by SEPP 65.

Development Control	Criteria / Guideline	Comments
Part 3 Siting the Development		
Site Analysis	Does the development relate well to its context and is it sited appropriately?	<p>Consistent</p> <p>A Site Analysis Plan has been submitted with the application.</p> <p>The application also includes the following reports to inform the assessment of the application:</p> <ul style="list-style-type: none"> • SEPP 65 Design Statement; • Geotechnical report; and • Statement of Environmental Effects.
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	<p>Consistent</p> <p>The proposal includes an indication of the streetscape appearance. The building bulk and</p>

		height overall is remains consistent and optimises solar access within the development and for neighbouring properties gives reasonable design outcomes.
Public Domain Interface	<p>Does the development transition well between the private and public domain without compromising safety and security?</p> <p>Is the amenity of the public domain retained and enhanced?</p>	<p>Consistent</p> <p>The development is considered to provide a satisfactory transition between the private and public domains without compromising safety and security.</p>
Communal and Public Open Space	<p>Appropriate communal open space is to be provided as follows:</p> <ol style="list-style-type: none"> 1. Communal open space has a minimum area equal to 25% of the site 2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9am and 3pm on 21 June (mid winter) 	<p>Consistent</p> <p>Given the site area of 697.4m² the development is required to provide 174m² communal open space.</p> <p>The development was constructed well before the gazettal of SEPP 65. Therefore, the site has a limited area (60m²) of communal open space which will remain as landscaped embankment at the rear. The application does not seek to alter the existing communal open space areas which is principally steep land within the rear setback to an adjacent reserve. New fencing is proposed for security along the boundary.</p> <p>The solar access to the communal open space at the rear of the site (west) remains unchanged but the landscape area has limited access. For fencing a condition is recommended the fence</p>

		limited to 1.2 metres above ground level and be lapped wooden paling that will also limit shadowing.												
Deep Soil Zones	<p>Deep soil zones are to meet the following minimum requirements:</p> <table border="1"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr> </thead> <tbody> <tr> <td>Less than 650m²</td><td>-</td><td rowspan="4">7%</td></tr> <tr> <td>650m² – 1,500m²</td><td>3m</td></tr> <tr> <td>Greater than 1,500m²</td><td>6m</td></tr> <tr> <td>Greater than 1,500m² with significant existing tree cover</td><td>6m</td></tr> </tbody> </table> <p>Achieving the design criteria may not be possible on some sites including where:</p> <ul style="list-style-type: none"> the location and building typology have limited or no space for deep soil at ground level (e.g. central business district, constrained sites, high density areas, or in centres); there is 100% site coverage or non-residential uses at ground floor level. <p>Where a proposal does not achieve deep soil requirements, acceptable stormwater management should be achieved and alternative forms of planting provided such as on structure.</p>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m ²	-	7%	650m ² – 1,500m ²	3m	Greater than 1,500m ²	6m	Greater than 1,500m ² with significant existing tree cover	6m	<p>Consistent</p> <p>Given the site area of 697.4m², the development is required to provide a 7% (49m²) deep soil zone within a minimum dimension of 6.0 metres.</p> <p>The development achieves this at the rear of the site with dimensions of 10 metres to 3 metres width. This area is unaffected by the proposed additions.</p> <p>The development achieves acceptable stormwater management.</p>
Site area	Minimum dimensions	Deep soil zone (% of site area)												
Less than 650m ²	-	7%												
650m ² – 1,500m ²	3m													
Greater than 1,500m ²	6m													
Greater than 1,500m ² with significant existing tree cover	6m													
Visual Privacy	<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1"> <thead> <tr> <th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> </tbody> </table>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	<p>Consistent</p> <p>The habitable rooms and balconies in the development are arranged along the side and front of the building and for courtyard on the upper and lower storey. Changes to the balcony are not altering</p>						
Building height	Habitable rooms and balconies	Non-habitable rooms												
Up to 12m (4 storeys)	6m	3m												

	<table border="1"> <tr> <td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr> <tr> <td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr> </table> <p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	<p>their shape.</p> <p>Given that the habitable rooms facing private open space overall the approved configuration below is maintained.</p> <p>No change proposed to separation distances for the building.</p>
Up to 25m (5-8 storeys)	9m	4.5m						
Over 25m (9+ storeys)	12m	6m						
Pedestrian Access and entries	<p>Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>	<p>Consistent</p> <p>The development provides access in context with the age of the building which is a legible building entry and defines the private property from the public domain. The stair areas will have better weather protection and aesthetic appearance.</p>						
Vehicle Access	<p>Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?</p>	<p>Consistent</p> <p>No change</p>						
Bicycle and Car Parking	<p>For development in the following locations:</p> <ul style="list-style-type: none"> On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p>	<p>Consistent</p> <p>No change proposed.</p> <p><u>Bicycle parking</u></p> <p>The ADG does not include any numerical requirement for the provision of bicycle parking.</p>						

	<p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p> <p>Visual and environmental impacts are minimised.</p>							
Part 4 Designing the Building								
Amenity								
Solar and Daylight Access	<p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:</p> <ul style="list-style-type: none">Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter.	<p>Consistent</p> <p>The additions will maintain solar access within the building as existing for all balconies. The roof terrace has a minor shadow change within the site.</p>						
	<ul style="list-style-type: none">A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.	<p>Consistent</p> <p>No change to the approved regime.</p>						
Natural Ventilation	<p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:</p> <ul style="list-style-type: none">At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.	<p>Consistent</p> <p>The development provides adequate number of apartments which are naturally cross ventilated. No change to the approved regime for the works.</p>						
	<ul style="list-style-type: none">Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.	<p>Consistent</p> <p>The overall depth of cross-through apartments do not exceed 18m. No change.</p>						
Ceiling Heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p>	<p>Inconsistent - Acceptable on merit</p>						
	<table><tr><td colspan="2">Minimum ceiling height</td></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr></table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	<p>The development retains compliant floor-to-ceiling</p>
	Minimum ceiling height							
	Habitable rooms	2.7m						
Non-habitable	2.4m							

	<table><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>1.8m at edge of room with a 30 degree minimum ceiling slope</td></tr><tr><td>If located in mixed used areas</td><td>3.3m for ground and first floor to promote future flexibility of use</td></tr></table>	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use	heights: <ul style="list-style-type: none">Habitable Rooms: 2.4m to 2.2mNon-Habitable Rooms: 2.4 to 2.2m <p>Ceiling heights are retained by the existing floor and roof structures.</p>				
For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area											
Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope											
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use											
Apartment Size and Layout	Apartments are required to have the following minimum internal areas:	Consistent <p>The development retains the following apartment sizes:</p> <ul style="list-style-type: none">Unit 1 - 1 Bedroom: 68m²Unit 2 - 2 Bedroom: 70m²Unit 3 - 2 Bedroom: 70m²Unit 4 - 1 Bedroom: 55m²Unit 5 - 3 Bedroom: 142m²Unit 6 - 1 Bedroom: 67m²Unit 7 - 1 Bedroom: 54m²Unit 8 - 3 Bedroom: 112m²										
	<table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m²</td></tr><tr><td>1 bedroom</td><td>50m²</td></tr><tr><td>2 bedroom</td><td>70m²</td></tr><tr><td>3 bedroom</td><td>90m²</td></tr></table>	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	
	Apartment type	Minimum internal area										
	Studio	35m ²										
	1 bedroom	50m ²										
2 bedroom	70m ²											
3 bedroom	90m ²											
The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m ² each.												
A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m ² each.												
Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.	Consistent (No change) <p>The alterations and additions maintain a total minimum glass area of not less than 10% of the floor area of the room.</p>											
Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	Consistent											
In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable	Consistent											

	room depth is 8m from a window.	The development includes habitable room depths of between 7.6 metres and 6.6 metres with no change proposed as per the existing approved regime.															
	Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space).	Satisfactory. No change to existing The non-compliant units are existing minor variations as approved being an older style apartment building.															
	Bedrooms have a minimum dimension of 3.0m and must include built in wardrobes or have space for freestanding wardrobes, in addition to the 3.0m minimum dimension.	Consistent No change to bedrooms.															
	Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none">3.6m for studio and 1 bedroom apartments4m for 2 and 3 bedroom apartments	Consistent No change.															
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	Consistent The non-compliant units are existing minor variations as approved being an older style apartment building.															
Private Open Space and Balconies	All apartments are required to have primary balconies as follows: <table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>4m²</td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m²</td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m²</td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m²</td><td>2.4m</td></tr></table>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	Satisfactory. No change to existing
	Dwelling Type	Minimum Area	Minimum Depth														
	Studio apartments	4m ²	-														
1 bedroom apartments	8m ²	2m															
2 bedroom apartments	10m ²	2m															
3+ bedroom apartments	12m ²	2.4m															
	The minimum balcony depth to be counted as contributing to the balcony area is 1m																
	For apartments at ground level or on a podium or similar structure, a private open space is provided	Satisfactory. No change															

	instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m.	Minimum 15.5m ² of principal private open space. Balcony areas cannot reasonably be widened with proposal due to the narrow property and concrete structure. The non-compliant units are existing minor variations being an older style apartment building.										
Common Circulation and Spaces	<p>The maximum number of apartments off a circulation core on a single level is eight.</p> <p>Where Design Criteria 1 is not achieved, no more than 12 apartments should be provided off a circulation core on a single level.</p> <p>Achieving the design criteria for the number of apartments off a circulation core may not be possible. Where a development is unable to achieve the design criteria, a high level of amenity for common lobbies, corridors and apartments should be demonstrated, including:</p> <ul style="list-style-type: none">• sunlight and natural cross ventilation in apartments.• access to ample daylight and natural ventilation in common circulation spaces.• common areas for seating and gathering.• generous corridors with greater than minimum ceiling heights.• other innovative design solutions that provide high levels of amenity.	<p>Satisfactory. Minor works within the building circulation spaces of the stair and entry points are suitable for the 8 existing Units.</p>										
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	Not applicable										
Storage	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m²</td></tr><tr><td>1 bedroom apartments</td><td>6m²</td></tr><tr><td>2 bedroom apartments</td><td>8m²</td></tr><tr><td>3+ bedroom apartments</td><td>10m²</td></tr></table>	Dwelling Type	Storage size volume	Studio apartments	4m ²	1 bedroom apartments	6m ²	2 bedroom apartments	8m ²	3+ bedroom apartments	10m ²	<p>Satisfactory. No change to the existing</p> <p>No change proposed. No additional bedrooms.</p>
Dwelling Type	Storage size volume											
Studio apartments	4m ²											
1 bedroom apartments	6m ²											
2 bedroom apartments	8m ²											
3+ bedroom apartments	10m ²											

	At least 50% of the required storage is to be located within the apartment.	
Acoustic Privacy	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	Consistent All garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, private open spaces and circulation areas are suitable for the building. Generally the status of existing acoustic privacy remains consistent.
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	Consistent The development is designed to minimise acoustic impact with minimal change for neighbouring development and the local road network as well as minimising noise transmission to neighbouring land uses.
Configuration		
Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	Consistent. No change to the current apartment mix.
Ground Floor Apartments	Do the ground floor apartments deliver amenity and safety for their residents?	Not applicable
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	Consistent The proposed building maintains its progressive setbacks and good levels of vertical and horizontal articulation such that the resulting building alignments and proportions that are generally balanced and reflective of the internal layout and structure.
Roof Design	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features.	Consistent The development retains a

	Can the roof top be used for common open space? This is not suitable where there will be any unreasonable amenity impacts caused by the use of the roof top.	flat roof form which is consistent the building original construction. The upper terraces were constructed for private use terraces in a split level arrangement across the floor plate of the building.																																			
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	Consistent The deep soil landscape areas are unchanged.																																			
Planting on Structures	When planting on structures the following are recommended as minimum standards for a range of plant sizes:	Consistent The development retains the main areas of existing planters area will some minor change at the front for pathway connections.																																			
	<table><tr><th>Plant type</th><th>Definition</th><th>Soil Volume</th><th>Soil Depth</th><th>Soil Area</th></tr><tr><td>Large Trees</td><td>12-18m high, up to 16m crown spread at maturity</td><td>150m³</td><td>1,200mm</td><td>10m x 10m or equivalent</td></tr><tr><td>Medium Trees</td><td>8-12m high, up to 8m crown spread at maturity</td><td>35m³</td><td>1,000mm</td><td>6m x 6m or equivalent</td></tr><tr><td>Small trees</td><td>6-8m high, up to 4m crown spread at maturity</td><td>9m³</td><td>800mm</td><td>3.5m x 3.5m or equivalent</td></tr><tr><td>Shrubs</td><td></td><td></td><td>500-600mm</td><td></td></tr><tr><td>Ground Cover</td><td></td><td></td><td>300-450mm</td><td></td></tr><tr><td>Turf</td><td></td><td></td><td>200mm</td><td></td></tr></table>	Plant type	Definition	Soil Volume	Soil Depth	Soil Area	Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent	Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm	3.5m x 3.5m or equivalent	Shrubs			500-600mm		Ground Cover			300-450mm		Turf			200mm		
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Turf			200mm																																		
Universal Design	<p>Do at least 20% of the apartments in the development incorporate the Livable Housing Guideline's silver level universal design features.</p> <p>The seven core design elements in the <i>LHA Silver Level</i> are:</p>	Consistent No change. The proposal includes minor additions only generally of a remedial work nature and modernisation to the external appearance.																																			

	<ol style="list-style-type: none"> 1. A safe continuous and step free path of travel from the street entrance and / or parking area to a dwelling entrance that is level. 2. At least one, level (step-free) entrance into the dwelling. 3. Internal doors and corridors that facilitate comfortable and unimpeded movement between spaces. 4. A toilet on the ground (or entry) level that provides easy access. 5. A bathroom that contains a hobless shower recess. 6. Reinforced walls around the toilet, shower and bath to support the safe installation of grabrails at a later date. 7. Stairways are designed to reduce the likelihood of injury and also enable future adaptation. 	
Adaptable Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	Not applicable
Mixed Use	<p>Can the development be accessed through public transport and does it positively contribute to the public domain?</p> <p>Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.</p>	<p>Consistent</p> <p>The development has accessibility to regular public transport routes at Manly wharf transport hub.</p>
Awnings and Signage	<p>Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development.</p> <p>Signage must respond to the existing streetscape character and context.</p>	Not applicable
Performance		
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?	N/A
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	<p>Consistent</p> <p>The alterations and additions maintain consistency with the water disposal measures and the impact of the development on any stormwater disposal with some minor drainage improvements</p>

		included in the scope of work.
Waste Management	Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?	Consistent The change to the building maintain consistency with Waste Management and do not change the existing collection and storage of waste and recycling.
Building Maintenance	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	Consistent The overall scheme for schedule of materials and finishes ensures the longevity and sustainability of the building.

STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

Clause 30 of SEPP 65 Standards that cannot be used as grounds to refuse development consent or modification of development consent states that:

(1) If an application for the modification of a development consent or a development application for the carrying out of development to which this Policy applies satisfies the following design criteria, the consent authority must not refuse the application because of those matters:

- (a) if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,
- (b) if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide,
- (c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.

Note. The Building Code of Australia specifies minimum ceiling heights for residential flat buildings.

Comment

The development satisfies the requirements of Clause 30(1)(a), (b) and (c).

(2) Development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to:

- (a) the design quality principles, and
- (b) the objectives specified in the Apartment Design Guide for the relevant design criteria.

(3) To remove doubt:

- (a) sub-clause (1) does not prevent a consent authority from refusing an application in relation to a matter not specified in subclause (1), including on the basis of sub-clause (2), and
- (b) the design criteria specified in sub-clause (1) are standards to which clause 79C (2) of the Act applies.

Note. The provisions of this clause do not impose any limitations on the grounds on which a consent authority may grant or modify development consent.

Comment

It is considered that adequate regard has been given to:

- (a) the design quality principles, and
- (b) the objectives specified in the Apartment Design Guide for the relevant design criteria.

SEPP (Building Sustainability Index: BASIX) 2004

With regard to a BASIX pursuant to the SEPP the *EPA Regulations 2021* states that:

"BASIX excluded development means the following development—

- (a) development for the purposes of a garage, storeroom, carport, gazebo, verandah or awning,
- (b) development that involves the alteration of a building listed on the State Heritage Register under the [Heritage Act 1977](#),
- (c) development that involves the alteration of a building resulting in a space that cannot be fully enclosed, other than a space that can be fully enclosed but for a vent needed for the safe operation of a gas appliance,

Example—

A verandah that is open or enclosed by a screen, mesh or other material that permits the free and uncontrolled flow of air.

- (d) development that involves the alteration of a building declared by the Planning Secretary, by order published in the *Gazette*, to be BASIX excluded development."

Therefore no BASIX certificate is required due to the nature of the works being (c) above. The project the subject of this Development Application proposes only spaces that cannot be fully enclosed and hence is entirely BASIX excluded development.

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 and provided *Ausgrid* advisory requirements as per the referral response dated 24.4.2023.

Other Service Authorities

The application was not required to be referred to *Transport for NSW*. No further service authority referral issues are raised pursuant to the SEPP. *Sydney Water* requirements are addressed by separate administrative processes managed directly by *Sydney Water*.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is close to the harbour area but is not within the mapped Coastal Use or Coastal Environment area therefore no further detailed consideration of Chapter 2 is required.

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 as a flat building for a significant period of time with no prior land uses in part or whole of the site that would lead to residual contamination. 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. The handling of demolition material (lead paint, asbestos or the like) is manageable by standard conditions, including compliance with relevant *Australian Standards* and compliance with health and safety laws during works.

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:	11.0m	11.8m	7.2%	No (New roof section)

		Existing roof 11.8m	(Not higher than the existing roof line.)	over stairs joined to existing roof)
Floor Space Ratio (Site area 697.4)	FSR:0.75:1 (523 sqm)	FSR: 0.93:1 (651.9sqm) (Existing)	24.6% (No change)	No (As approved)

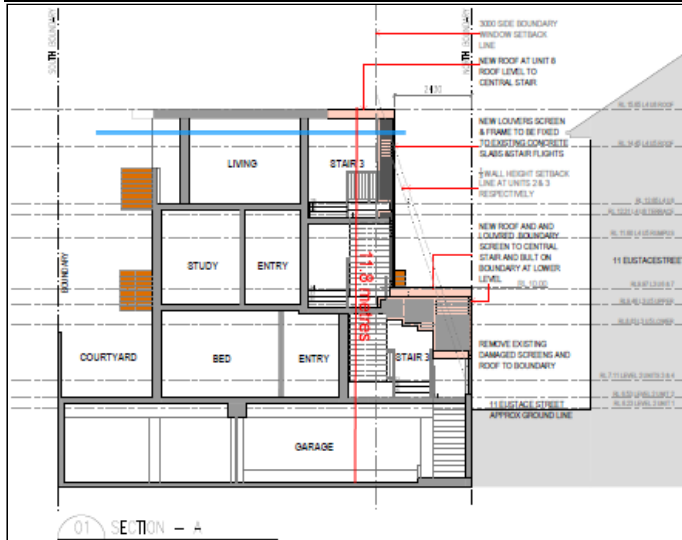


Figure 3: Existing ground level (including excavated basement) consistent with the approach taken in *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582. General 11 metres height line shown (blue) and 11.8m height of the new roof section (and screen wall) over the stairwell. Using extrapolated natural ground level the building would comply with the 11m height plane due to up to 3m of excavation. See merit consideration under the heading "Clause 4.6" within this report.

Compliance Assessment

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

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of building
Requirement:	11.0m
Proposed:	11.8m
Percentage variation to requirement:	7.2% (0.8m)

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 minor extent of new built form above common staircase three is unlikely to disrupt views to nearby residential development from public spaces, views from nearby residential development to public spaces or views between public spaces.*
- *The proposed height of the roof to common staircase three has been designed to be consistent with the topographic landscape, prevailing building height and desired future character of the locality. This is achieved as the new roofing seamlessly follows the existing rear roof form and maintains the existing maximum building height.*
- *Despite the proposed development's non-compliance with the applicable height development standard, the proposal achieves the desired character of the area. The proposal provides a height, bulk and scale that is generally consistent with that envisaged by Council's controls.*
- *It should also be noted that the proposal improves the amenity of the subject site while maintaining the amenity of surrounding development; is consistent with the objectives of the R1 General Residential Zone.*
- *The minor extent of height breach to accommodate roofing and louvres for weather protection to common staircase three will maintain solar access to public open spaces.*
- *The existing residential flat building exceeds the height development standard;*
- *The maximum building height will be maintained as existing;*
- *The proposed roof addition to common staircase three follows the existing rear roof form and the breach will not be readily visible from the street;*
- *Strict compliance would require non-compliant head heights beneath the proposed roof or no roof and louvres to the top extent of the staircase which would have adverse amenity impacts;*
- *The roofing over staircase three will provide much needed weather protection to the staircase;*
- *The roofing over staircase three will assist with stormwater drainage on site; and*
- *The works above the height limit will assist with the longevity of the residential flat building.*
- *The works ensure a building envelope that is likely to maintain the environmental amenity of 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 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 R1 General Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The new roof and screen side element to the staircase involves a minor addition to the building to provide weather protection as well as BCA upgrade and aesthetic improvements. The overall main roof line and building height of the main roof span is unchanged. The new roof section fits with the restyling of the building exterior and suitable for age of the building as its currently present to the streetscape.

b) to control the bulk and scale of buildings,

Comment:

The new roof section for the exterior stairs step back from the side boundary at the upper level and are already partly enclosed. The refurbishment does not create unreasonable building bulk along the side wall plane and the additions fit reasonably with the existing built form of the stairs and unit access points. It is unnecessary and unreasonable to require compliance to the 11m height in the circumstances in that the non-compliance is not inconsistent with any of the height control merit objectives or the objectives of the zone. The height is being measured from below the ground level into the basement for the upper additions to the external stairs and the new roof is the same height as the main roof span which by way of measurement from extrapolated ground level is lower than the 11m height plane.

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 changes to the building are roof do not cause any view impact as they are in line with the upper roof level and on the side wall plane integrated to the main superstructure of the building shape.

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 changes to the roof and variation to the height do not contribute to any unreasonable loss of solar access. The side screening for the steps assist to maintain better privacy protection within the site and for adjacent land.

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

Comment:

The proposed new roof element and side wall screen that is above 11m does not create any unreasonable impact on adjacent parkland, vegetation or the topography. In reality the new roof section if measured from extrapolated natural ground line would be below the 11m height plane and does not contribute to unreasonable building bulks as it follows the outline of the existing stairwell.

Zone objectives

The underlying objectives of the R1 General Residential zone are:

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

Comment

The existing flat building is of an age that required remediation works, including fire standards, safety and weather protection improvement to external access areas to meet the needs of the occupants. Therefore, the proposal is consistent with this objective.

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

Comment

The proposed alterations and additions inclusive of the proposed height variation enhances the longevity of the existing building. The surrounding street are dominated by apartment style development and flat buildings of different styles and age with some houses also. The proposal is consistent with this objective to upgrade and retain (modernise) the existing flat building.

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

Comment

The site does not include any other land use facilities or services and as such this objective is not relevant.

Conclusion:

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

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning & 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 Local Planning Panel.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 697.4 sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 150 sqm	8 on site (No change)	72% (Existing)	No (As approved)
	Dwelling Size: 1 bedroom dwelling: 50sqm 2 bedroom dwelling: 70sqm 3 bedroom dwelling: 90sqm	No change to Units 1 to Unit 8 inclusive (Existing)	N/A	Yes (No change)
4.1.2.1 Wall Height	North side: 10m (based on gradient 1 in 5)	8.8m North wall (Existing)	N/A	Yes (No change)
	South side: 9.5m (based on gradient 1 in 8)	9.0m South wall (Existing)	N/A	Yes (No change)
4.1.2.2 Number of Storeys	3 + basement (Area L)	3 + basement (Existing)	N/A	Yes (No change)
4.1.2.3 Roof Height	Height: 2.5m	0.2m (Existing)	N/A	Yes (No change)
	Parapet Height: 0.6m	0.45m (Existing)	N/A	Yes (No change)

	Pitch: maximum 35 degrees	2 degrees (Existing)	N/A	Yes (No change)
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Consistent with prevailing setback. (Existing)	N/A	Yes (No change)
4.1.4.2 Side Setbacks and Secondary Street Frontages	3m (based on wall height)	3m (Existing building) Encroachment for new mesh / louvres on stair refurbishment and roof section.	N/A 1m to 0.6m	Yes No*
	Windows: 3m	0.9m Unit 1 3.0m Unit 5 0.0m for stair level (Existing)	N/A	No (As approved) Yes
4.1.4.4 Rear Setbacks	8m	3.7 to 6.8m (Existing)	53% (No change)	No (As approved)
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS2 (Site area 697.4sqm)	Total open space 50% of site area 348sqm	53% 371sqm (Existing)	6.4%	Yes
	Open space above ground max 40% of total open space 139sqm	34% 119sqm (Existing)	N/A (No change)	Yes (As approved)
4.1.5.2 Landscaped Area	Landscaping area 30% of total open space 104sqm	20% 69sqm (Existing)	33% No change	No (As approved)
	3 native trees	0 trees (Existing gardens established)	N/A (No change)	No (As approved)
4.1.5.3 Private Open Space	12sqm per dwelling	All units comply (Between 15sqm to 55sqm) (Existing)	N/A	Yes (No change)
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	4.2m (Existing)	N/A	Yes (No change)

Schedule 3 Parking and Access	1 per Unit 0.2 per 2-bed Unit 0.5 per 3-bed Unit 0.25 per Unit Visitor parking	12 space + 2 visitor spaces (Existing)	N/A (No change)	Yes (As approved)
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* See detailed merit assessment within this report.

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
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 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	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

Relevant requirements and objectives, pursuant to *Clause 3.4.1 Sunlight Access and Overshadowing*, are considered as follows

Comment

- Shadow diagrams have been provided for the 21 June which provide detail as to the extent of change to overshadowing from the new stair roof. It is considered that the proposal will have a minor impact on the unit courtyards either side of the central stair, the impact is minor insofar that the subject courtyards all face north. The proposed additions provides weather protection and privacy screening, safety to the stairs for the benefit of the Unit complex itself. The proposed addition will have no shadowing impact to the neighbouring properties or other apartments on adjacent land.



Figure 4 - Solar access at 12noon on 21 June and 3pm with new shadow cast on central roof terrace only with 2 hours maintained between 11 and 1pm. At 9am the roof terrace is overshadowed by the higher RFB to the north of the site. (Blue element is existing approved roof area from a previous DA consent and brown element is the stair awning weather cover.

- The overshadowing does not affect No.7 Eustace Street pursuant to Section 3.4.1.3 *Overshadowing Solar Collector Systems* as the alterations and additions to the stairs are on the eastern side of the building and are confined to the stair access points at the rear and mid section as can be seen in the image above. North is across the side boundary (top of image).
- No change is proposed or reduction in solar access to the existing apartments within the subject building. The new roof section impact is minor and does not create unreasonable loss of light due to the narrow width and northside position as shown.

Having regard to the above assessment, and objectives of this clause it is concluded that the proposed development is consistent with the 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.

3.4.2 Privacy and Security

Relevant requirements and objectives, pursuant to *Clause 3.4.2 Privacy and Security*, are considered

as follows:

Comments:

- The proposal has been designed to ensure no unreasonable loss of privacy to adjacent and nearby development by the use of design responses including perforated screens on the stairwells and "timber look" re-cladding to the balustrades. Rear fencing is proposed to be 2.1m high, however this is unnecessary for the Tower Reserve, detracts from public reserve by "walling it out" and therefore the paling fencing is to be conditioned to be a maximum height of 1.2 metres as the dividing fence to public reserve land and the heritage amenity of this reserve.
- The alterations and additions to the building seek to provide upgrading of BCA aspects as well as cosmetic improvements that also assist privacy and security. The side screens for the stair follow the outline of the superstructure of the stairs and are suitable.
- The alterations and additions have been designed with appropriate response to ensure no unreasonable impacts on privacy (both acoustical and visual) for adjacent land.
- Overall the proposal provides an appropriate level of privacy in the context of the surrounding density of the residential living environment without unreasonably compromising access to light and air. Bedroom areas, being normally occupied less during the day and used for sleeping at night will not be unreasonably impacted. The flat building remains consistent with the approved context within the surrounding environment and relationship to adjacent buildings.

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

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

The relevant requirements and objectives pursuant to *Clause 4.1.4 Setbacks*, are considered as follows:

Merit Assessment Comments:

- The additions do not proposed any new window openings and the main wall lines remain unchanged for the units. The roof and cladding for the stairs follows the superstructure of the existing stairs and steps in from the side boundary at the upper level.

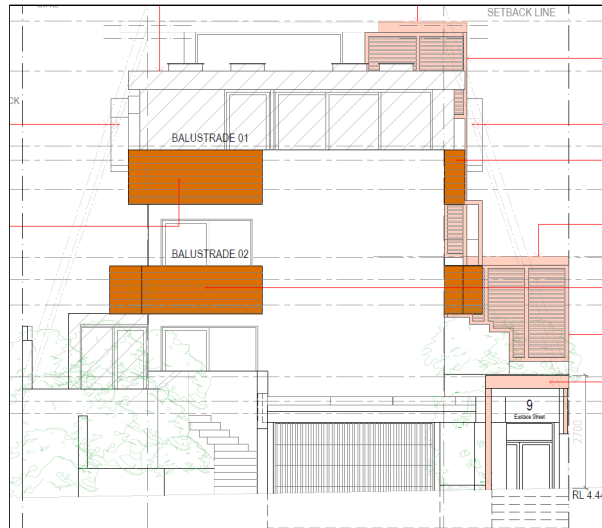


Figure 5: Area of additions shaded (note the balustrades are existing and only re-clad) show minor non-compliance with the 1m / 3m side setback envelope (shown)

- The alteration and additions are consistent with the spatial proportion of the overall massing of the building and the front and rear setback will be retained. The new outer screens for the stairs are perforated and are acceptable by the DCP in the side setback as they are for unenclosed balconies, roof eaves, sun-hoods, and the like. The open styling assists to ensure no adverse impact on adjoining properties including loss of privacy. A new / improved stair access is also included for the rear access to Tower Hill reserve where the land has a steep rear setback.
- The building alterations do not create unreasonable amenity impacts by way of the setback elements of the each storey for Units adjacent. Reasonable access to sunlight, ventilation, outlook and noise amenity will be maintained that are appropriate for the density of the surrounding residential environment. Screening provided on the northern side of the Unit 1 and 2 courtyards assist to prevent overlooking and enhance privacy.
- The non-compliance to the side setback for the alterations do not disrupt the pattern and scale of the streetscape character. Within the frontage and along the fenceline the works include a new entry awning and louvres screens along the side fence within the property boundary to enhance privacy and define the pedestrian entry point better. The image below indicates the minor alterations.

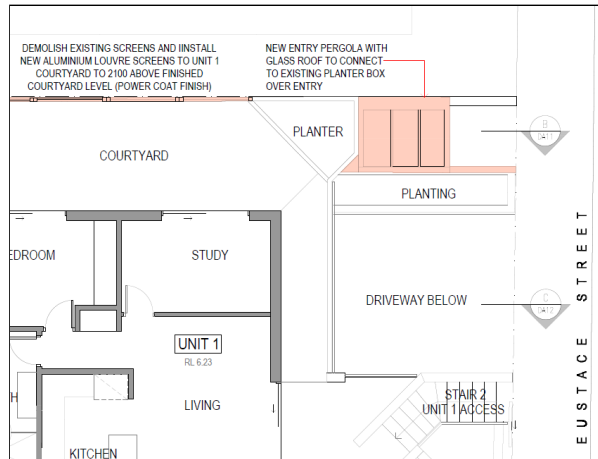


Figure 6: Works in front setback and along side boundary.

- Considerations about building fire separation have been addressed by the applicant to the satisfaction of Council's Building Surveyor or the purposes of fire engineering solutions. The site is not affected by natural bushfire hazard.

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

4.1.5 Open Space and Landscaping

Relevant requirements and objectives, pursuant to *Clause 3.1.5 Open Space and Landscaping*, are considered as follows:

Merit Assessment Comments:

- Only minor changes are proposed to the landscape planting in that the proposal utilises as part of the cosmetic improvements to the building and surroundings including works to address remediation of the retaining walls at the rear of the site and replace / renew vegetation in the available space there. The alterations and additions to not no detract from the existing landscape setting to the streetscape. Whilst there is a minor non-compliance with the proportion of above ground open space to total open space, the alterations and additions seek to make better use of existing marginal outdoor open space areas for improved internal living

areas and the building appearance.



Figure 7: existing facade

- Landscape areas will remain consistent with the existing building layout, including common property areas of deep soils zones that remain. The site is not appropriate for very large trees which would impact surrounding coastal outlook, light or potentially building elements over the long term. This is consistent with the pattern of surrounding development along Eustace Street.
- The site backs onto a local reserve and no change is proposed to the landscape areas at the rear of the site however the remedial work to the stairs and retaining walls require reinstatement of these spaces after construction works. The site is not within a bushfire zone that would limit certain tree species where there are alterations and additions proposed.



Figure 8: existing facade

- Landscape elements at the rear and front of the building will remain consistent to the existing landscape components and to complement the cosmetic changes to the aesthetic improvements to the building and provide amenity when viewed from public and private land. The use of very high (2.1 metres) paling fencing at the rear is unsympathetic to the adjacent public reserve and a condition is recommended for 1.2 metres paling fencing (security gate proposed may be 1.5 metres high).

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$5,071 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$507,070.

CONCLUSION

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

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

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

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

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

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

PLANNING CONCLUSION

This proposal, for alterations and additions to a residential apartment building has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to the building being also 4 storeys.

No objections to the proposal were received by way of notification of the DA

The critical assessment issues are limited to the technical non-compliance of 11.8m (7.2%) with building height control of 11m for the building however this is due to the existing excavated basement. The works are generally for remedial and modernisation of the building to improve external safety and include cosmetic improvements, minor drainage and fencing. Non-compliance with the setback controls do not create any unreasonable impacts on surrounding dwellings or the streetscape. No change to the existing floor space is proposed.

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

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.

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2023/0325 for Alterations and additions to a residential flat building on land at Lot CP SP 31425, 9 Eustace Street, MANLY, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA01 A Site Plan	24.4.2023	Cradle Design Pty Ltd
DA03 A Floor Plan - Level 1	28.11.2022	Cradle Design Pty Ltd
DA04 A Floor Plan - Level 2	28.11.2022	Cradle Design Pty Ltd
DA05 A Floor Plan - Level 3	24.4.2023	Cradle Design Pty Ltd
DA06 A Floor Plan - Level 4	28.11.2022	Cradle Design Pty Ltd

DA07 A Roof and Stormwater Plan	24.4.2023	Cradle Design Pty Ltd
DA10 A East and West Elevations and Section A	24.4.2023	Cradle Design Pty Ltd
DA11 A North Elevation and Section B	24.4.2023	Cradle Design Pty Ltd
DA12 A South Elevation and Section C	24.4.2023	Cradle Design Pty Ltd
DA17 A Finishes Schedule	28.11.2022	Cradle Design Pty Ltd

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Report G21128MAN-R02F	7.3.2023	Geo Environmental Engineering

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	15.3.2023	Cradle Design Pty Ltd

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

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

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	24.4.2023
Aboriginal Heritage Office	AHO Referral Response	28.7.2023

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

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 a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

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

 - (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2018
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
 - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in 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 \$5,070.70 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 \$507,070.00.

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. National Construction Code (BCA) Report (Class 2-9)

A 'National Construction Code (BCA) Assessment Report' from an appropriately qualified Registered Certifier* will need to be submitted with the Construction Certificate application addressing the following:

The report is to detail the extent to which the proposed works and existing building (relevant affected parts) do or do not comply with the deemed-to satisfy provisions of Sections C and D of the National Construction Code (BCA). The report is to also provide recommendations with respect to the existing building / works required to ensure that the specified measures and facilities contained in the existing building, including any modifications to be made by the proposed development are appropriate for its intended use to:

- i) restrict the spread of fire from the building to other buildings nearby, and
- ii) protect persons using the building, and to facilitate their egress from the building in the event of fire, and
- iii) where appropriate, provide access for persons with a disability,

*To be regarded as an "appropriately qualified registered certifier" the certifier must hold the relevant level of accreditation that would enable the certifier to issue a construction certificate for the subject building.

The 'National Construction Code (BCA) Assessment Report' is to be submitted to the Certifying Authority with the Construction Certificate application.

Reason: To ensure adequate provision is made for Health, Amenity, Access & Fire Safety for building occupant health & safety.

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 [the kerb in Eustace Street.

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. Rear Boundary Fence

The rear boundary fence is to be reduced in height to a maximum of 1.2 metres(m), and include timber paling material above ground level with an updated schedule of materials and colours for the rear fence (palings and posts and colour) are to provide to Northern Beaches Council's Heritage Officer for approval, prior to the issuing of the Construction Certificate. The rear pedestrian gate to the rear stairs is to be limited to 1.5m high and be of timber and metal

frame.

Details demonstrating compliance with this condition are to be provided to the Principal Certifying Authority

Reason: Maintenance and amenity setting of the heritage item and its significance to Tower Hill Park (being Council owned land).

10. **Compliance with standards (Demolition):**

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 Council prior to the commencement of demolition works.

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

11. **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

12. **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.

13. **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.

14. Demolition Works - Asbestos

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifier, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

15. 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 Certifying Authority.

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

16. 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**17. 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.

18. 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.

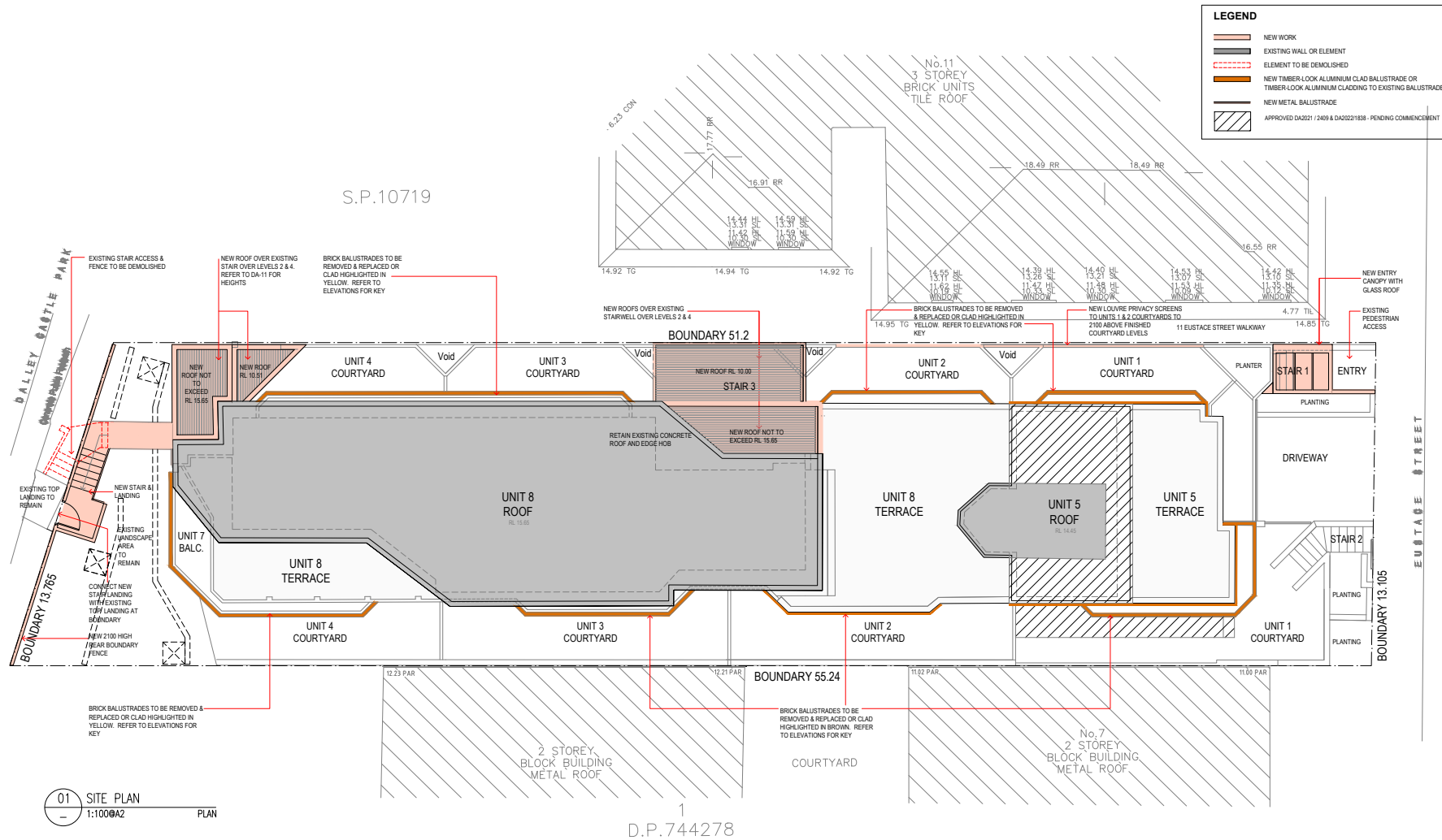
Reason: To prevent pollution of the environment and to protect the amenity of the area.

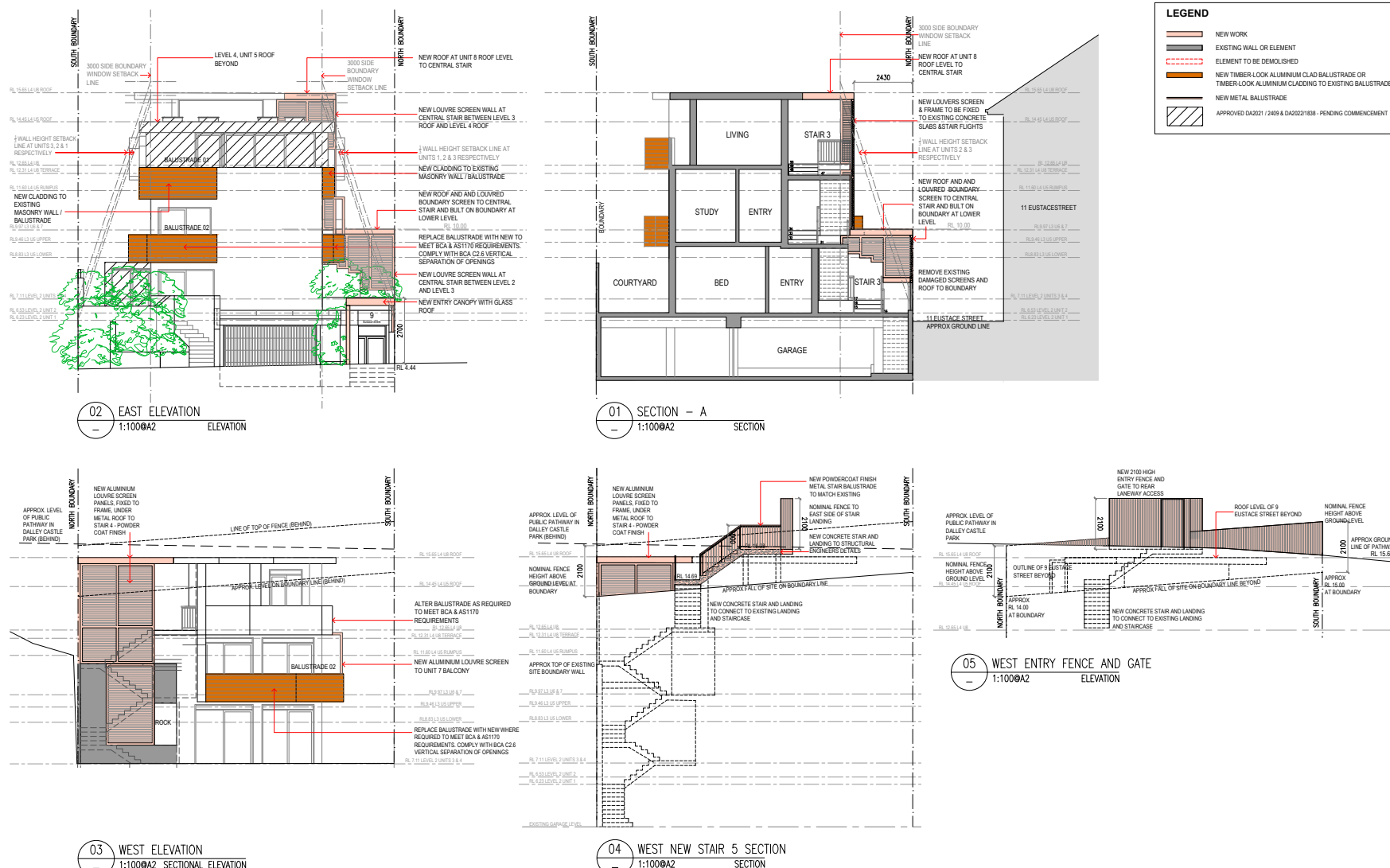
19. **Strata Plan**

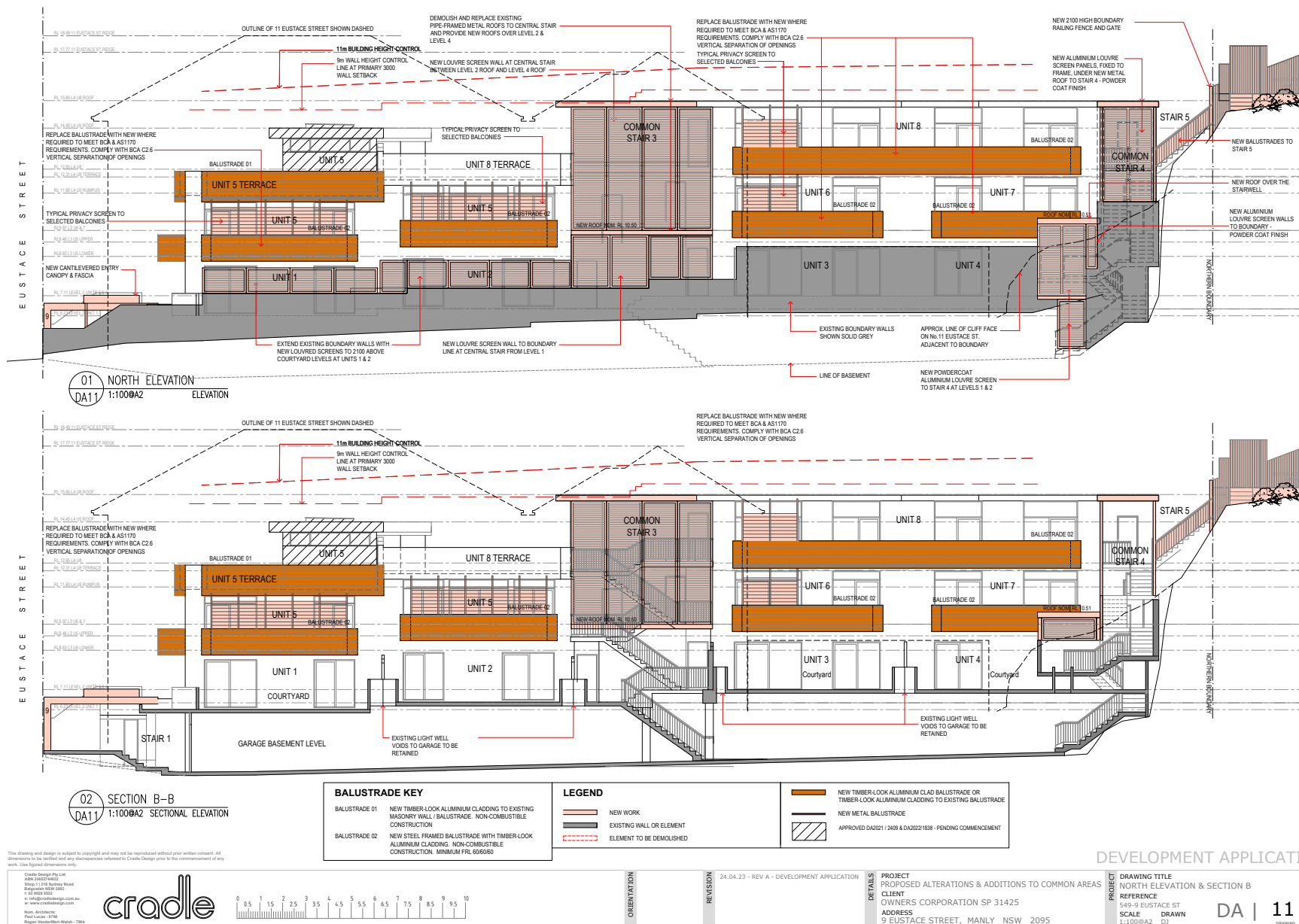
The Strata Plan for the subject property Title is to be revised / updated by a qualified and practicing Surveyor to reflect the approved building layout changes. Evidence of the updated Strata Plan having been lodged for registration with the NSW Land Titles Office is to be submitted to Council.

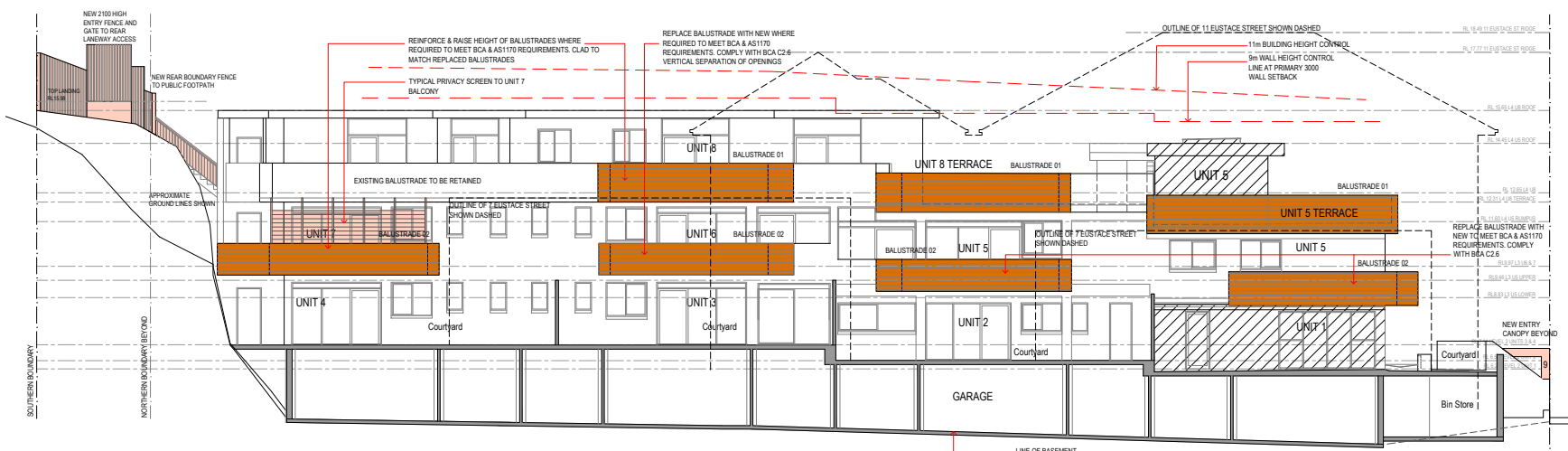
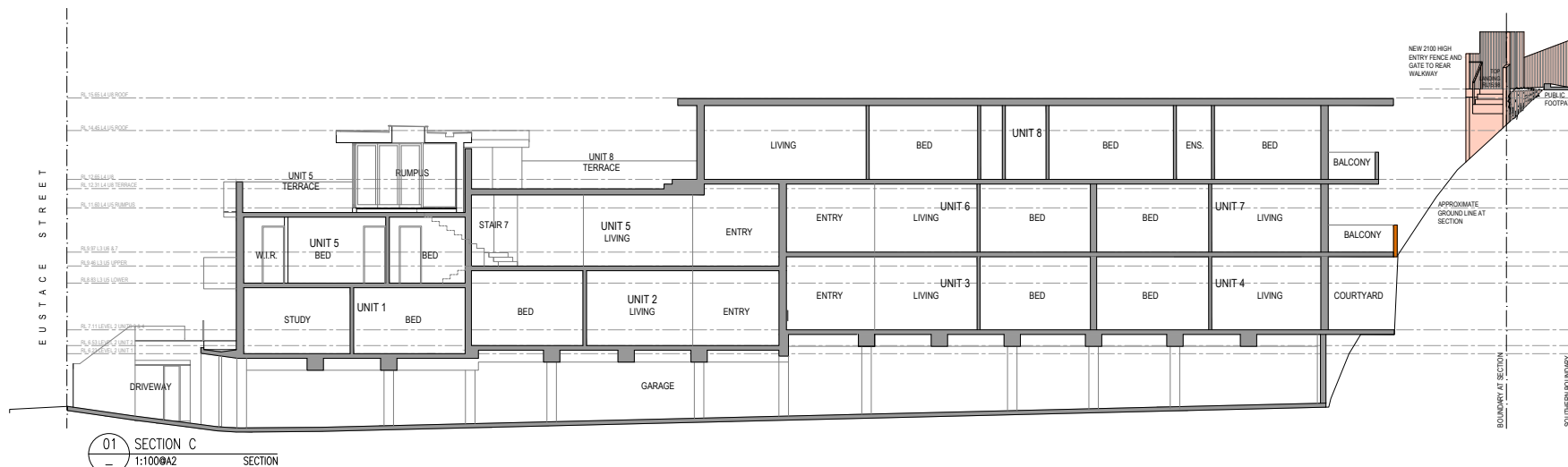
Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: Land Title records









BALUSTRADE KEY

BALUSTRADE 01 NEW TIMBER-LOOK ALUMINIUM CLADDING TO EXISTING MASONRY WALL / BALUSTRADE. NON-COMBUSTIBLE CONSTRUCTION.

BALUSTRADE 02 NEW STEEL FRAMED BALUSTRADE WITH TIMBER-LOOK ALUMINIUM CLADDING. NON-COMBUSTIBLE CONSTRUCTION. MINIMUM FRL 60/60/60

LEGEND

— NEW WORK

— EXISTING WALL OR ELEMENT

- - - - - ELEMENT TO BE DEMOLISHED

■ NEW TIMBER-LOOK ALUMINIUM CLAD BALUSTRADE OR TIMBER-LOOK ALUMINIUM CLADDING TO EXISTING BALUSTRADE

▨ NEW METAL BALUSTRADE

▨ APPROVED DA2021 / 2409 & DA2022/1838 - PENDING COMMENCEMENT

DEVELOPMENT APPLICATION

24.04.23 - REV A - DEVELOPMENT APPLICATION

PROJECT
PROPOSED ALTERATIONS & ADDITIONS TO COMMON AREAS

CLIENT
OWNERS CORPORATION SP 31425

ADDRESS
9 EUSTACE STREET, MANLY NSW 2095

DRAWING TITLE
SOUTH ELEVATION & SECTION C

REFERENCE
549-9 EUSTACE ST

SCALE
1:100@A2

DRAWN
DA | 12 A

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cradle

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ORIENTATION

REVISION



MANLY LEP 2013

Clause 4.6 Exceptions to Development Standards – Height of Buildings

Proposed Alterations and Additions to the Existing
Residential Flat Building at

No. 9 Eustace Street, Manly

Prepared for:

Owners Group SP31425

c/- Cradle Design

Shop 1, 316 Sydney Road

Balgowlah NSW 2093

Prepared by:

GSA PLANNING

Urban Design, Environmental & Traffic Planners

(A.B.N 89 643 660 628)

95 Paddington Street, Paddington NSW 2021

p: 02 9362 3364

e: info@gsaplanning.com.au

JOB NO. 22314

August 2023

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MANLY LOCAL ENVIRONMENTAL PLAN (LEP) 2013
CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

APPLICANT'S NAME: Owners Group SP31425**SITE ADDRESS:** No. 9 Eustace Street, Manly**PROPOSAL:** Alterations and Additions to the Existing Residential Flat Building

1.

(i) **Name of the applicable planning instrument which specifies the development standard:**

Manly Local Environmental Plan (LEP) 2013

(ii) **The land is zoned:**

R1 General Residential. The objectives of the R1 General Residential Zone are as stated:

- To provide for the housing needs of the community.
- To provide for a variety of housing types and densities.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

(iii) **The number of the relevant clause therein:**

Clause 4.3 – Height of Buildings which is stated as follows:

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

- (a) *to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
- (b) *to control the bulk and scale of buildings,*
- (c) *to minimise disruption to the following—*
 - (i) *views to nearby residential development 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 conservation zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

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

This Clause 4.6 Exception to Development Standards should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by GSA Planning.

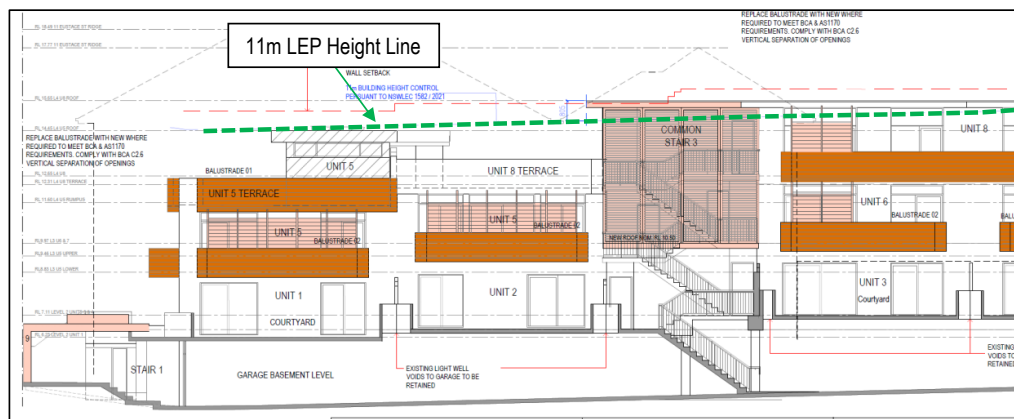
2. Overview

This Clause 4.6 Exception to Development Standards has been prepared in accordance with the most recent case law. In our opinion, the variation achieves the objectives of the zone and development standard and has demonstrated there are sufficient environmental planning grounds to justify contravening the development standard.

3. Specify the nature of Development Standard sought to be varied and details of variation:

The development standard to which this request for variation relates is Clause 4.3 of the LEP – Height of Buildings. This Clause operates in conjunction with the Height Map which indicates a maximum 11m applies to the subject site. Clause 4.3 is consistent with the definition for a development standard under Section 1.4 of the Environmental Planning and Assessment Act 1979 (EPA Act).

The existing residential flat building on site has a maximum height of 11.8m measured from the roof ridge to the existing ground level immediately below and exceeds the LEP height limit. Accordingly, it is inevitable that any remediation or improvement works to the rear roof form would also not comply with the height limit. As a result of the existing height non-compliance to the rear roof form, the new roofing over common staircase three and a portion of the louvers will be above the height limit. However, it must be noted that the variation is negligible in extent and follows the existing roof form. The maximum building height will remain 11.8m, representing a 7.2% variation as existing (see **Figure 1**).



Source: Cradle

Figure 1: Long Section Demonstrating Maximum Height

4. Consistency with Objectives of Clause 4.6

The objectives of Clause 4.6 seek to provide appropriate flexibility to the application of development standards in order to achieve better planning outcomes both for the development and from the development. In the Court determination in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] 236 LGERA 256 (*Initial Action*), Preston CJ notes at [87] and [90]:

Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development...In any event, Clause 4.6 does not give substantive effect to the objectives of the clause in Clause 4.6(a) or (b). There is no provision that requires compliance with the objectives of the clause.

However, it is still useful to provide a preliminary assessment against the objectives of the Clause. The objectives of Clause 4.6 and our planning response are as follows:

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

The proposal seeks flexibility in the application of the height development standard in the circumstances of this particular case, as a portion of the existing building which is to be refurbished is above the height limit. The works above the height limit simply relate to new roofing above a common staircase and a portion of the associated louvres.

The proposed amendments to common staircase three that exceed the LEP height limit will not be readily visible from Eustace Street when compared to the existing situation and will not adversely impact the appearance of the residential flat building when viewed from the street, rather will ensure compatibility with the other proposed works across the exterior of the building. The new roofing to common staircase three will follow the roof form of the existing structure at the rear and the associated portion of louvres which are above the height limit are a continuation of the louvres to the entire stairwell. The roof form and louvres to the stair enclosure will provide much needed weather protection for the occupants of the building and the enclosure of this staircase with a roof and louvres will not result in adverse additional bulk or scale when compared to the existing situation. The minor extent of works above the height limit have been designed to enhance the amenity of the residential flat building and contribute to the longevity of the building, which is considered appropriate in this instance. The residential flat building will remain consistent with the bulk, scale and character of surrounding development along Eustace Street. Importantly, the maximum height on site will be maintained.

5. Justification of Variation to Development Standard

Clause 4.6(3) outlines that a written request must be made seeking to vary a development standard and that specific matters are to be considered. The Clause states, inter alia:

- (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.*

This written request justifies the contravention of the development standard by demonstrating that compliance is unreasonable or unnecessary in the circumstances; and there are sufficient environmental planning grounds to justify the non-compliance. These matters are discussed in the following sections.

5.1 Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case

Clause 4.6(3)(a) requires the applicant to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. In *Wehbe v Pittwater Council* (2007) 156 LGERA 446 (*Wehbe*), Preston CJ established five potential tests for determining whether a development standard could be considered unreasonable or unnecessary. This is further detailed in *Initial Action* where Preston CJ states at [22]:

These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

It is our opinion that the proposal satisfies Test 1 established in *Wehbe* and for that reason, the development standard is unreasonable and unnecessary in this instance. The relevant test will be considered below.

Test 1 - The objectives of the standard are achieved notwithstanding non-compliance with the standard;

Despite the proposed development's non-compliance with the applicable height development standard, the proposal achieves the desired character of the area. The proposal provides a height, bulk and scale that is generally consistent with that envisaged by Council's controls. Reasons why the proposed development achieves the objectives of the height standard are explained 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,

The proposed height of the roof to common staircase three has been designed to be consistent with the topographic landscape, prevailing building height and desired future character of the locality. This is achieved as the new roofing seamlessly follows the existing rear roof form and maintains the existing maximum building height. Importantly, the minor portion of height variation will not be readily visible from Eustace Street, however, will contribute to the enhanced appearance of the existing residential flat building and the site's overall appearance in the streetscape.

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

The proposed new roofing to common staircase three and the associated louvres which exceed the height limit will not result in adverse additional bulk or scale to the existing residential flat building. Rather, the new roofing and louvres to the staircase will be lightweight and will follow the height of the existing rear roof form. Therefore, in our opinion, the minor extent of variation which is a result of required refurbishment works will not result in adverse additional bulk or scale above the LEP height limit. Importantly, the existing maximum building height will be maintained.

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

The minor extent of new built form above common staircase three is unlikely to disrupt views to nearby residential development from public spaces, views from nearby residential development to public spaces or views between public spaces. This is because the minor refurbishment works to common staircase three simply include a new roof structure which follows the form of the existing rear roof and follows the existing maximum building height. As such, the technical height variation which is a continuation of the existing non-compliant roof form will not disrupt views when compared to the existing situation.

- (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,

The minor extent of height breach to accommodate roofing and louvres for weather protection to common staircase three will maintain solar access to public open spaces. Additionally, given the maximum height on site is maintained and the new roofing which breaches the height limit follows the existing roof form, the proposal will maintain solar access to private open spaces and to the habitable room windows of adjacent dwellings in accordance with the DCP requirements.

- (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.

N/A

5.2 There are Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard

The proposal is permissible in the R1 General Residential Zone, is consistent with the relevant zone objectives and satisfies an 'unreasonable and unnecessary' test established by the Court in *Wehbe*. There are sufficient environmental planning grounds to justify the technical height breach, which will be discussed below.

Existing Height Variation

As a portion of the existing rear roof form exceeds the 11m height limit, it is inevitable that any works to the roof area of common staircase three would also not comply resulting in a technical breach of the height development standard. As a result of the existing height non-compliance, the provision of new roofing to common staircase three which follows the existing rear roof form will fall above the height limit. However, the proposed works have been carefully designed to ensure there is no adverse additional bulk or scale above the height plane when compared to the existing situation.

To ensure strict compliance with the development standard would require a roof to common staircase three with insufficient head heights, or no roof to common staircase three and no louvres at the top extent, meaning no weather protection. As such, the height breach is considered a better planning outcome for the site rather than providing non-compliant floor to ceiling heights or a common staircase with no weather protection.

Weather Protection

As discussed, the new roofing and associated louvres to common staircase three are required to provide much needed weather protection. Currently, the staircase is exposed to the elements creating a poor level of amenity and dangerous circumstances for occupants utilising the staircase in wet weather conditions. The height breach is a result of the proposal following the existing rear roof form for consistency and the proposed roofing and louvres will significantly enhance the amenity of the site to meet modern living requirements.

Stormwater Requirements

The new roofing to common staircase three has been designed to enhance the stormwater drainage on site.

Other Matters for Consideration

It should also be noted that the proposal improves the amenity of the subject site while maintaining the amenity of surrounding development; is consistent with the objectives of the R1 General Residential Zone and the relevant DCP built form and amenity provisions; and results in an enhanced built form outcome. While these factors may not strictly constitute environmental planning grounds, they should be considered in the assessment of the height breach.

Accordingly, in our opinion, the non-compliance will not be inconsistent with existing and desired future planning objectives for the locality. For the reasons contained in this application, there are sufficient environmental planning grounds to justify the minor variation to the development standard in the circumstances of this case, as required in Clause 4.6(3)(b).

6. Clause 4.6(4)(a) Requirements

Clause 4.6(4)(a) guides the consent authority's consideration of this Clause 4.6 variation request. It provides that:

- (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*

The applicant submits that the consent authority can be satisfied of each of the requirements of Clause 4.6(4)(a), for all the reasons set out in this written request, and having regard to the site and locality.

In our opinion, the proposal achieves the objectives of the Height of Buildings Development Standard, as already demonstrated; and the R1 General Residential Zone, as discussed below:

- Objective: *To provide for the housing needs of the community.*
Response: The proposal maintains eight units within the residential flat building which will continue to provide for the housing needs of the community. The external amenity of the apartments will be upgraded by the proposed works.
- Objective: *To provide for a variety of housing types and densities.*
Response: The proposal maintains the units and unit mix as existing.

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

Response: N/A

From this, we consider the proposal is in the public interest and should be supported.

7. Clauses 4.6(4)(b) and 4.6(5) Requirements

Clause 4.6(4)(b) of the LEP requires the concurrence of the Secretary (of the Department of Planning and Environment) before the consent authority can exercise the power to grant development consent for development that contravenes a development standard.

Under Clause 55 of the Environmental Planning and Assessment Regulation 2021, the Secretary has given written notice dated 5 May 2020, attached to the Planning Circular PS 20-002 issued on 5 May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under Clause 4.6, subject to the conditions in the table in the notice. Since the conditions in the table do not apply in this case, the concurrence of the Secretary can be assumed.

Nevertheless, the matters in Clause 4.6(5) should still be considered when exercising the power to grant development consent for development that contravenes a development standard (*Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at [100] and *Wehbe* at [41]). In deciding whether to grant concurrence, the Secretary is required to consider the following:

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

The proposal is not considered to raise any matter of significance for State or regional environmental planning. The height non-compliance will enhance the amenity and functionality of the existing residential flat building without significantly, unreasonably or unacceptably impacting neighbouring properties.

The public benefit of maintaining the development standard is not considered significant given that, regardless of the non-compliance, the proposal will appear consistent in the streetscape.

Accordingly, the proposal is consistent with the matters required to be taken into consideration before concurrence can be granted. The non-compliance contributes to a quality development which is consistent with the desired character of the precinct and is, in our opinion, in the public interest.

8. Conclusion

This written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard. This is summarised in the compliance matrix prepared in light of *Initial Action* (see **Table 1** on the following page).

We are of the opinion that the consent authority should be satisfied that the proposed development will be in the public interest because it achieves the objectives of the standard and the development objectives of the R1 General Residential Zone pursuant to the LEP. On that basis, the request to vary Clause 4.3 should be upheld.

Table 1: Compliance Matrix

Para (Initial Action)	Requirement	Section of this Report	Summary	Satisfied
10	Is it a development standard (s.1.4)	1	Yes	
11	What is the development standard	1	Clause 4.3: Height of Buildings	
12	What is the control	1 & 2	11m	
14	First Precondition to Enlivening the Power – Consent authority must form 2 positive opinions:		Both positive opinions can be formed as detailed below.	YES
15, 25	1st Positive Opinion – 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 Clause 4.6(3). There are two aspects of that requirement.	5	The Clause 4.6 variation has adequately addressed both matters in Clause 4.6(3) by providing a detailed justification in light of the relevant tests and planning considerations.	YES
16-22	First Aspect is Clause 4.6(3)(a) – That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. Common ways are as set out in <i>Wehbe</i> .	5.1	The proposal satisfies Test 1 of <i>Wehbe</i> : <ul style="list-style-type: none"> The objectives of the standard are achieved notwithstanding the non-compliance with the standard. 	YES
23-24	Second Aspect is Clause 4.6(3)(b) – The written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under Clause 4.6(4)(a)(i) that the written request has adequately addressed this matter. The environmental planning grounds must be "sufficient" in two respects: a) The environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. b) The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole.	5.2	Sufficient environmental planning grounds include, inter alia: <ul style="list-style-type: none"> The existing residential flat building exceeds the height development standard; The maximum building height will be maintained as existing; The proposed roof addition to common staircase three follows the existing rear roof form and the breach will not be readily visible from the street; Strict compliance would require non-compliant head heights beneath the proposed roof or no roof and louvres to the top extent of the staircase which would have adverse amenity impacts; The roofing over staircase three will provide much needed weather protection to the staircase; The roofing over staircase three will assist with stormwater drainage on site; and The works above the height limit will assist with the longevity of the residential flat building. 	YES
26-27	2nd Positive Opinion –	6	The proposed development achieves the objectives of the height standard as addressed under Test 1 of <i>Wehbe</i> . The proposal also	YES

	That the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out.		achieves the objectives of the R1 General Residential Zone.	
28-29	Second Precondition to Enlivening the Power – That the concurrence of the Secretary has been obtained [Clause 4.6(4)(b)]. On appeal, the Court has the power to grant development consent, subject to being satisfied of the relevant matters under Clause 4.6.	7	As the relevant matters for consideration under Clause 4.6 have been satisfied as outlined above, the Council can grant development consent.	YES

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Nominated architects – **Regan VanderWert-Walsh – 7904**
Paul Lucas - 8786

Our ref: 2021_CRADLE_Strata/ 9EUS
18/08/2023

RE: SEPP 65 Design Verification Statement

Prepared to accompany the Development Application for the
proposed class 2 residential development alterations and additions at:

9 Eustace Street, Manly, NSW, 2095

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Verification of Qualifications

Cradle Design nominated Architects – Paul Lucas and Regan VanderWert-Walsh are both registered with the NSW Board of Architects;

Regan VanderWert-Walsh – 7904

Paul Lucas – 8786

Design Practitioner Registration - Paul Lucas - DEP0000977

All projects within the practice are under the supervision of the nominated Architects and the practice carefully follows the standards required of architects when engaged to provide architectural services.

Statement of Design

Cradle Design has been responsible for the design of the project since its inception and has worked with related professional and experts in respect of the matter.

The project has been designed to provide a development that is respectful of local planning and design controls and that responds to the best practice design principles of SEPP No. 65.

Cradle Design verify that the design quality principles set out in Schedule 1, Design Quality Principles of the State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development are achieved for the new apartment.



Yours sincerely,
Regan VanderWert-Walsh
Director
Architect NSW 7904

CRADLE DESIGN PTY LTD

Site Description

The subject site is on Eustace Street just off the West Esplanade/ Manly Wharf foreshore. It offers proximity to an extensive public transportation network connecting to the city and northern beaches, shops, and schools.

The surveyed site area is 697.4m² on strata lot SP 31425.

Surrounding Context

The surrounding neighbourhood is a mix of multi-residential apartments and mixed-use development of varying heights, 2 to 5 storeys, and a church/ community hall facility.

Manly wharf and foreshore are within 100m south of the property, Manly oval to the north and Manly CBD to the east. The west boundary is council reserve hillside land with pathway connections to Rowe and Tower Street. 9 Eustace has a back-gate access from the public footpath.

Design Proposal

The proposal is for cosmetic alterations and additions to the existing residential flat building including a new entry pergola, louvre privacy screening to the Unit 1 and 2 courtyards, new tiling, and balustrading to select balconies, new pedestrian stairs at the rear of the site and associated replacement rear boundary fencing. The works also include new roofing over the existing external stairwells at levels two and four.

No change to the existing number of apartments or overall apartment mix is proposed.

Additionally, remediation work at the rear of the site is required to overcome erosion impacts to the rear staircase. Provision of a new staircase will formalise the appearance of the site from the rear and will be constructed entirely within the site boundaries.

Compliance Analysis

The following sections outline the Apartment Design Guide recommendations, how each of the minimum standards of the Guide are applied to the refurbished residential apartment, existing development and how each of the standards are achieved in relation to the design objectives of this Guide.

1. Apartment Design Guide Assessment – common area works
2. SEPP 65 Design Quality Principles – common area works

Note;

The existing apartments form no part of this development application, however, have been included in this analysis in relation to benefiting from common area works, balcony balustrade upgrades and solar access.

1. Apartment Design Guide Assessment – Units 1 & 5, 9 Eustace Street

Part 3 – Siting the development.

3A Site analysis

The Statement of Environmental Effects and the Site Analysis Plan provide written and visual analysis of the development, context, streetscape, and site.

3B Orientation

The proposed additions to common areas achieve this objective within the constraints of the subject site.

The proposed additions replace and add to the ineffective and dilapidated north facing screening, railings, and roofing.

The balcony balustrade replacements are needed for safety.

The proposed development does not create overshadowing on adjacent sites and minimal additional shadowing to existing apartments at 9 Eustace Street.

3C Public domain interfaces

There are two public domain interfaces –

Eustace Street

New glazed roof entry pergola is proposed, formalising and clearly identifying entrance to the property. The current entrance is hidden behind landscaping and some building façade. Unit 1 (accessed directly via separate gate from Eustace Street) is often mistaken for the entry, with public or visitors walking up into Unit 1 courtyard area.

Dally Castle Park walkway

The existing staircase and entry gate cross over the property boundary. The proposed staircase to site, security gate and boundary fence all sit within the site boundary and are compliant to required building codes and standards. The proposed works will formalise the site entry, increase security from a rear laneway, provide safe access down to the site and remove items outside the property boundary.

Additionally, remediation work at the rear of the site is required to overcome erosion impacts to the rear staircase.

The remainder of the site is otherwise private with apartment external areas located on private balconies & courtyards throughout.

3D Communal and public open spaces

The existing site is located in a mixed commercial/residential precinct that has an outdoor beach activity lifestyle on the doorstep. For this reason, the existing communal open space is provided in the form of private balconies/ courtyards servicing each apartment.

The existing communal open space area is within the context of the surrounding precinct rather than on the site.

3E Deep soil zones

The existing site area has deep soil zones, and no change is proposed in this application.

3F Visual privacy

The separation distances between the existing surrounding buildings to the proposed new apartment area are in context with the neighbouring buildings and surrounding area. A large part of No. 11 Eustace Street southern façade sits within 3m of the northern boundary of 9 Eustace Street.

The new screening proposed to the common area stair wells and northern balconies to upper apartments, provides increased privacy for apartments at 9 Eustace Street and 11 Eustace Street apartments/ common areas.

3G Pedestrian access and entries

Pedestrian access is to remain in the same location and be upgraded.

See **3C Public domain interfaces** – for details.

3H Vehicle access

The existing driveway crossing, driveway and car parking are to remain.

3J Bicycle and car parking

The existing car & bicycle parking is to remain.

Part 4 – Designing the Building

4A Solar and daylight access

Minimal effect to the existing apartments access to sunlight is foreseen by the proposed changes. The new screened area will receive a minimum of 2 hours direct sunlight between 9am and 3pm at mid-winter (refer to shadow diagrams for illustrated examples).

While some additional shadows may be created on adjacent balconies or courtyards from the central stairwell screening, it should be noted that the shadows cast by existing adjacent buildings and topography of the land are far greater.

4B Natural ventilation

The existing apartments and common areas are naturally ventilated. No change is proposed.

4C Ceiling heights

No Change to ceiling heights to existing apartments is proposed.

Ceiling heights to common areas to be retained or increased as noted.

4D Apartment size and layout

No Change to existing apartments proposed.

4E Private open space and balconies

Private open space and balconies to remain. New balustrades, waterproofing and tiling to balconies indicated in application.

Proposed screening to apartments with north facing balconies will enhance privacy and provide further solar screening for residents.

4F Common circulation and spaces

The existing common areas and access stairwell's area to be retained in size and area.

Proposed screening and stairwell upgrade are proposed to enhance privacy, security, safety, and weather protection.

4G Storage

No Change to storage areas proposed.

4H Acoustic privacy

There may be some improvement to acoustic privacy from the open stairwells, with the introduction of the new screening structure.

4J Noise and pollution

The locality, at times, could be regarded as a noisy environment with passing traffic and pedestrians.

There may be some improvement to reduced noise from the open stairwells, with the introduction of the new screening structure.

Pollution will be better controlled with the common areas being less open.

4K Apartment mix

The apartment mix is to be retained.

4L Ground floor apartments

The existing apartments are set up from the street. Only Unit 1 is accessible directly from the street. A new gate structure has been approved for this unit as part of a separate application.

The proposed entry portico will formally identify the pedestrian entrance from Eustace Street.

4M Facades

9 Eustace Street has a mixed scale of mixed use commercial and residential buildings. The proposed cosmetic additions fit within the context of this scale and character.

The pedestrian and vehicular entries at street level are clearly defined.

4N Roof design

The roof design to apartments remains the same. The new roof areas proposed to the stairwells are in keeping with the existing roof design.

4O Landscape design

New low-level landscaping proposed to pedestrian access from Eustace Street, enabling better visibility of entrance.

Additionally, remediation work at the rear of the site is required to overcome erosion impacts to the rear staircase. Landscaping to be reinstated after these works are completed.

4P Planting on structures

Not applicable,

4Q Universal design

Access to the site and individual apartments remains unchanged.

Adaptable housing is not required under in accordance with the relevant council policies.

4R Adaptable reuse

Not applicable,

4S Mixed use

Not applicable.

4T Awning and signage

Not applicable.

4U Energy efficiency

The proposed screening to common areas will provide additional screening to northern sun in summer – reducing head load on apartment walls, while allowing sun penetration in winter.

The existing building is well insulated and thermal mass of the building is exploited to reduce energy use. Natural ventilation is available to all existing apartments.

New LED lighting is proposed to common area works, replacing the outdated and inefficient existing lighting.

4V Water management and conservation

Water management to be implemented as part remediation work at the rear of the site to assist in reducing flooding to stairwells and basement.

4W Waste management

A dedicated existing waste area is provided for rubbish bins and recycling on the street level of the site.

4X Building maintenance

Appropriate design, detailing, and materials are employed to protect the common area from the elements. Materials used in the proposed development are selected for their durability and low maintenance. The existing apartment building is in good condition and is mostly sound in structure, materials and finish.

The single skin balconies are being replaced which will resolve the current issues of brickwork pulling away from facades and cracking.

The building height does not cause access problems for maintenance and all windows are accessible via balconies or courtyards.

2. SEPP 65 Design Quality Principles New and existing apartments

The following section outlines the Design Quality Principles outlined in SEPP 65 and how each of these principles are applied and achieved in relation to the proposed common area additions.

Principle 1 – Context and Neighbourhood Character

The site is situated along the western side of Eustace Street. It is bounded to the east, north and south by multi-residential buildings. The existing apartments are well established and have been well maintained.

The proposed common area additions are designed to upgrade the main building; consistent with the main building; use their design and setbacks to minimise any impact on the street or neighbouring properties.

Principle 2 – Built Form and Scale

Surrounding buildings are predominantly between one and two storey older style single dwellings and 3-5 storey multi-unit residential developments.

The existing apartment building is a well-established part of the streetscape, and no major changes are proposed to the existing apartments or site.

The scale and bulk of the new common areas are broken down via location and scale. Only the new pedestrian entries are visible to the public realm. The stairwell and balcony screening will be largely hidden by surrounding buildings and typography of the site.

The height of the new screen enclosures to the common stair match the existing building roof height. The new roofing to staircases is unlikely to result in adverse impacts on the adjoining properties in regard to loss of privacy, but rather improves privacy for neighbouring development by virtue of the sight screening effect of the louvre screens. These screens will also enhance the amenity of the site's residents by improving the privacy of staircases users.

A careful composition of massing, detailing, building elements, textures, materials, and colours contribute to the consideration of scale within the existing and proposed building design. This ensures the building merges into the surrounding streetscape.

Accordingly, the proposed development responds well to the topography, context of the neighbourhood and character of the locality.

Principle 3 – Density

Not Applicable.

Principle 4 – Sustainability

BASIX excluded.

Principle 5 – Landscape

New low-level landscaping proposed to pedestrian access from Eustace Street, enabling better visibility of entrance.

Additionally, remediation work at the rear of the site is required to overcome erosion impacts to the rear staircase. Landscaping to be reinstated after these works are completed.

No change is proposed to any other existing site landscaping.

Principle 6 – Amenity

The current and future residents of the development already benefit from a good level of amenity assisted with provision made for the following:

A good variety of apartments sizes, layouts and general configuration.

Appropriate connections and subtle separation of spaces within the apartments to capture light.

Adequate day lighting and solar access for all rooms within the apartments.

The building layout allows ventilation to all bedrooms and habitable spaces.

Carefully considered privacy measures to any balconies and bedroom windows facing adjoining properties.

Due to the proximity of the harbour foreshore, beach and Manly CBD existing communal open space is not provided in the existing apartment complex, nor could it be instated without significant alterations to the strata complex and existing apartments.

Principle 7 – Safety

Safety and security area provided for both existing and future occupants and the public domain through the following design measures:

Eustace Street:

A single identifiable main building entrance on Eustace Street and undercover entry allow for adequate surveillance. It is clearly visible from the street with security camera and intercom to identify visitors to the common areas.

Dally Castle Park walkway

The proposed staircase access to common areas, security gate and boundary fence all sit within the site boundary and are compliant to required building codes and standards. The proposed works will formalise the site entry from the rear laneway, increase security from a rear laneway, and provide safe access.

A clear definition between public and private spaces with safe access points and adequate lighting of entrances to pedestrian and vehicle areas with clear visibility.

Principle 8 – Housing Diversity and Social Interaction

The existing apartments contribute to the availability of well-designed dwelling configurations to the Manly vicinity without having adverse effects on the character and amenity of the immediate area.

The size, configuration, and mix of the apartments within the development provides an appropriate response to the market demand of future occupants.

Having less than 10 apartments, adaptable dwellings are not required in this proposal.

The site is located within close proximity to necessary facilities including public transport, supermarkets, educational and leisure facilities as well as schools and healthcare, including the following:

Shops, amenities, banks, and post office are located within this precinct. Healthcare amenities including doctors and dentists.

Restaurants and Cafes in the vicinity along Campbell Parade.

Recreational areas such as Manly Oval, Manly beach, Manly foreshore/ harbour beaches and North Head

Principle 9 – Aesthetics

The simple form of the proposed additions enables a blending in with the existing apartment complex and can be broken down into the following elements:

The elevations are designed primarily to respond to privacy, the sun, setbacks, and the site. The building has a modern and clean aesthetic, tempered by environmental control, site response and position of neighbouring properties.

Colours and materials are selected to create seamless transition between inside and outside, allowing the development to subtly blend with its surrounding neighbourhood.

An interplay of light and shade through various projections, recesses, and materials will assist to break down the massing of the building.

All materials selected will be durable and hard wearing so the development does not prematurely age. This will enhance the long-term image of the building with its careful composition of building elements, textures, materials, colours, internal design, and structure contributing positively to the desired future character of the vicinity.

Summary

The proposed common area additions, address each of the nine Design Quality Principles of the State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development as set out in Schedule 1 and Part 3 and Part 4 of the Apartment Design Guide with a strong positive response to each.

The proposed development largely complies with the relevant DCP and LEP in terms of the principles discussed above further indicating the level of compliance with SEPP 65.

The proposed development has responded to the site conditions to produce a high quality, sustainable extended apartment with a variety of liveable spaces, excellent solar access and cross ventilation.

The proposed development is well suited to its location and will contribute positively to the residential context and atmosphere of the neighbourhood.

ITEM 5.3

DA2023/0322 - 109 FLORENCE TERRACE, SCOTLAND ISLAND - LANDSCAPING WORKS, STAIRS, DECKING, TIMBER SKID BOAT RAMP AND REMEDIAL WORK TO EXISTING TIMBER JETTY ANCILLARY TO A DWELLING HOUSE

AUTHORISING MANAGER Steve Findlay
TRIM FILE REF 2023/626214
ATTACHMENTS
1 [↓ Assessment Report](#)
2 [↓ Site Plan](#)
3 [↓ Clause 4.6](#)

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Limited Development on Foreshore Area Development Standard of Clause 7.8 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 the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2023/0322 for landscaping works, stairs, decking, timber skid boat ramp and remedial work to existing timber jetty ancillary to a dwelling house on land at Lot 64 DP 810165, 109 Florence Terrace, SCOTLAND ISLAND and Lot LIC 525364, 109 Florence Terrace, SCOTLAND ISLAND, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0322
Responsible Officer:	Nick Keeler
Land to be developed (Address):	Lot 64 DP 810165, 109 Florence Terrace SCOTLAND ISLAND NSW 2105 Lot LIC 525364, 109 Florence Terrace SCOTLAND ISLAND NSW 2105
Proposed Development:	Landscaping works, stairs, decking, timber skid boat ramp and remedial work to existing timber jetty ancillary to a dwelling house
Zoning:	C3 Environmental Management
Development Permissible:	Yes - Zone C3 Environmental Management Yes - Zone W1 Natural Waterways
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Rest-Ezi Furniture Pty Ltd
Applicant:	Michael Tobin
Application Lodged:	27/03/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	03/04/2023 to 17/04/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	7.8 Limited development on foreshore area
Recommendation:	Approval
Estimated Cost of Works:	\$ 158,268.00

EXECUTIVE SUMMARY

This application seeks consent for landscaping works, stairs, decking, timber skid boat ramp and remedial work to an existing timber jetty which is ancillary to a dwelling house.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) as the proposal seeks to vary the non-numerical development standard clause 7.8 Limited development on foreshore

area of the Pittwater Local Environmental Plan 2014.

The proposed development involves construction of retaining walls and decking below the 15m foreshore building line, and within the foreshore area.

The Clause 4.6 request for the non-compliance with the foreshore area development standard involves works that are well integrated with the site topography, do not involve significant site disturbance and fit in with the context of the area. As such, the request is well founded and is supported. However, there are other elements (upper deck at RL 10.95 and associated retaining walls, earthworks and garden beds) which are also within the Foreshore Area, but are not addressed in the Clause 4.6 variation request, hence these elements have been excluded by way of condition from the approved works.

The application was notified in accordance with Council's Community Participation Plan. No submissions were received.

Critical assessment issues include; consideration of the impact of the proposed structures within the foreshore area and the impact of the proposed skid ramp contributing to additional waterfront development.

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

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for landscaping works, stairs, decking, timber skid boat ramp and remedial work to existing timber jetty ancillary to the existing dwelling house.

The proposed works are primarily located between the dwelling and mean high water mark, with the skid ramp partially below the mean high water mark within the Pittwater waterway.

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 - B8.3 Construction and Demolition - Waste Minimisation
Pittwater 21 Development Control Plan - D8.6 Side and rear building line
Pittwater 21 Development Control Plan - D15.14 Minimum frontage for waterfront development
Pittwater 21 Development Control Plan - D15.15 Waterfront development

SITE DESCRIPTION

Property Description:	<p>Lot 64 DP 810165 , 109 Florence Terrace SCOTLAND ISLAND NSW 2105</p> <p>Lot LIC 525364 , 109 Florence Terrace SCOTLAND ISLAND NSW 2105</p>
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the eastern side of Florence Terrace.</p> <p>The site is irregular in shape with a frontage of 11.885m along Florence Terrace and a maximum depth of 84.24m. The site has a surveyed area of 905m².</p> <p>The site is located within the C3 Environmental Management zone and accommodates a single storey residential dwelling house, a detached cabana and a jetty.</p> <p>The site falls approx. 26m from the west towards the waterfront to the east.</p> <p>The site contains several canopy trees, groundcover vegetation and exposed rock outcrops.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by low density residential dwellings and waterfront structures, including boat sheds and jetties.</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:

Building Information Certificate **BC2022/0229** for a sandstone block retaining wall 1,300mm high in the foreshore area, a metal pile/timber sleeper retaining wall 1,300mm high in the foreshore area (not yet poured), two metal pile/timber sleeper retaining walls, both 1,100mm high at the top of the slope (not yet poured) was issued on 08/03/2023.

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. Additional information was requested in relation to further details outlining non-compliance with the DCP.</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	See discussion on "Notification & Submissions Received" in this report.

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application that included a certificate (prepared by Bushfire Consultancy Australia, dated 27/05/2022) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 03/04/2023 to 17/04/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulfate)	<p>Supported, subject to conditions</p> <p>The applicant is seeking consent for proposed landscaping works, stairs, decking, timber skid boat ramp, remedial work to existing timber jetty and use of unauthorised retaining wall.</p> <p>The subject site is located in a Class 5 and Class 1 Acid Sulfate area. It is not considered that the proposed development will unreasonably disturb, expose or drain acid sulfate soils throughout construction and any associated excavation.</p> <p>Environment Health supports the proposal with conditions</p>
Environmental Health (Unsewered Lands)	<p>Supported, subject to conditions</p> <p>Applicant advises:</p> <p>The proposed development involves proposed landscaping works, stairs, decking, timber boat ramp and remedial work to existing timber jetty. The purpose of</p>

Internal Referral Body	Comments
	<p>the proposed development is to provide pedestrian access from the existing pontoon and jetty adjoining the foreshore to the residential dwelling on the subject site. The landscaping works relate to proposed garden beds and retaining walls which will support the proposed access from the foreshore to the residential dwelling.</p> <p>The proposed access from the foreshore will be provided by a series of stairs, landings and decks to be constructed of timber with Envirowalk Micromesh to be used for the decking material.</p> <p>The proposed boat skid ramp will be constructed of timber with 4 concrete posts to be located between the existing timber jetty and the sea wall of the adjoining neighbour to the south. I note that the proposed boat ramp will sit lower than both of these existing structures.</p> <p>The remedial works to the existing timber jetty relate to the replacement of deteriorated timber decking boards and remedial work to the existing concrete support posts of the jetty.</p> <p>The location, form and extent of the existing structure will remain unchanged.</p> <p>The application does not refer to the significant potential issue of impacts on the waste water disposal area.</p> <p>Environmental Health believes that any impact on waste water disposal areas (ie garden bed areas/pedestrian areas) can be managed and therefore supports the proposal with conditions.</p>
Landscape Officer	<p><i>Supported, subject to conditions</i></p> <p>The proposal is supported with regard to landscape issues.</p> <p>Council's Landscape Referral section have assessed the application against the Pittwater Local Environment Plan 2014 zone C3 Environmental Management, 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 • D8 Lower Western Foreshores and Scotland Island Locality <p>The site is within zone C3 Environmental Management, and the following objectives are to be achieved and/or maintained by development: protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values; provide for residential development of a low density and scale integrated with the landform and landscape, and not visually prominent; encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors; and ensure the continued viability of</p>

Internal Referral Body	Comments
	<p>ecological communities and threatened species.</p> <p>The Arboricultural Impact Assessment states "...no excavation is proposed or required to allow for the construction.." which is evidently incorrect as excavation has already been completed and as per the levels shown on the proposed plans further excavation and fill may be required. A Project Arborist shall be engaged to supervise all works in the tree protection zone of all trees, and the design and alignment of the steps shall be completed in collaboration with the Arborist after tree root investigations have been completed, subject to the imposed conditions. Furthermore, any recommendations from the Project Arborist regarding construction methodology/tree sensitive construction techniques shall be adopted and implemented.</p> <p>Locally native planting shall be installed in front of the retaining walls that are situated to the east of the 'new deck' (at RL 10.95). The 'new garden bed' (at RL 9.40) shall include locally native planting capable of achieving a mature height of 1500mm at maturity. The retaining wall further again to the east of the aforementioned wall will be approximately 1000mm high and as such the planting selected (to be installed at the base of this wall) shall be able to achieve a mature height of at least 1000mm.</p> <p><u>Planner Note:</u></p> <p>Due to a partial inadequacy in the Clause 4.6 variation request, the proposed new deck at RL 10.95 and associated garden beds are conditioned to be deleted and the area retained as soft surface landscaping. As a result, the "Required Screen Planting" condition recommended by the Landscape Officer becomes redundant. As such, this condition is not included in the recommendation.</p>
NECC (Bushland and Biodiversity)	<p><i>Supported, subject to conditions</i></p> <p>The proposal seeks approval for landscaping works, stairs, decking, timber skid boat ramp, remedial work to existing timber jetty. The comments on this referral relate to the following applicable controls:</p> <ul style="list-style-type: none"> • SEPP (Resilience and Hazards) 2021 - Development within the coastal environment • NSW Biodiversity Conservation Act 2016 • NSW Biodiversity Conservation Regulation 2017 • Planning for Bushfire Protection (PBP) 2019 • Pittwater LEP 2014 - Clause 7.6 Biodiversity Protection • Pittwater DCP 21 - Clause B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community <p>The proposal has been submitted with the following biodiversity related documents:</p>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> • Ecology Report (East Coast Ecology Pty Ltd, July 2022) • Arboricultural Impact Assessment (Botanics P/L, June 2022) • Bushfire Report (Bushfire Consultancy Australia, May 2022) • Aquatic Ecology Report (Marine Pollution Research Pty Ltd, August 2022) <p>Portions of the site are identified on the Department of Planning and Environment's Biodiversity Values Map (BV Map). Under the NSW Biodiversity Conservation Act, any removal of native vegetation from within mapped areas will trigger the Biodiversity Offsets Scheme (BOS) and the requirement for a Biodiversity Development Assessment Report (BDAR).</p> <p>It is noted that this DA relates to the use of some works that were subject of a Building Certificate application. The comments hereafter relate to the future works that will be undertaken should development consent be granted. The Ecology letter that has been provided determines that the entry into the BOS is not triggered as no impacts to native vegetation will take place within the area mapped within the BV Map, which also had a high weed cover (noting the presence of two priority weeds, <i>Lantana camara</i> and <i>Asparagus aethiopicus</i>). The letter also stated that no understory is present after the unauthorised works and the remaining canopy trees will be retained.</p> <p>The Arboricultural Impact Assessment has identified a total of 6 trees which are all <i>Corymbia maculata</i> (Spotted gums) typical of Pittwater Spotted Gum Forest (endangered ecological community). The AIA has also noted "All remain in good health with full canopies noted" and recommends protection measures to be in place for works to continue. Council's Landscape Referral team have included several consent conditions related to tree protection measures to reduce potential impacts to the native trees on site.</p> <p>The bushfire report has awarded a BAL-19 risk hazard to the property and recommended that all new landscaping is treated as an APZ in Accordance with Appendix 4 of PBP 2019.</p> <p>The statement of environmental effects provided with the application has also indicated that landscaping works for proposed garden beds are to take place. No landscaping plan with a planting schedule has been provided with the application, conditions will apply to ensure that the selection of plants is compliant with B4.7 PDCP.</p> <p>The aquatic ecology report provided with the application has indicated that the unauthorized works undertaken would not have impacted on the marine environment. However, the report has identified the introduced algae <i>Caulerpa taxifolia</i>.</p>

Internal Referral Body	Comments
NECC (Coast and Catchments)	<p><i>Supported, subject to conditions</i></p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Plans and reports lodged in support of this DA; • Coastal Management Act 2016; • State Environmental Planning Policy (Resilience and Hazards) 2021; and • Pittwater LEP (2014) and Pittwater 21 DCP. <p>Assessment of the application has also considered:</p> <ul style="list-style-type: none"> • Consent of landowner to lodge a DA from the Department of Planning, Industries & Environment - Crown Lands, dated 2 March 2022. • No objection to the proposed development from the Department of Primary Industries - Fisheries, dated 12 December 2022. <p>Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore the Coastal Management Act 2016 is applicable to the DA. The proposed development is considered to be consistent with the objects, as set out under Clause 3 of the Coastal Management Act 2016.</p> <p>State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Divisions 3, 4 and 5 of SEPP (R & H) apply to this Modification Application. On internal assessment, and as assessed in the undated Statement of Environmental Effect (SEE) by Northern Development Assessment, the DA satisfies requirements under 3, 4 and 5 of SEPP (R & H). As such, it is considered that the application does comply with the provisions of the State Environmental Planning Policy (Resilience & Hazards) 2021, subject to conditions.</p> <p>Pittwater LEP 2014 and Pittwater 21 DCP Limited Development on Foreshore Area The subject site is affected by the Foreshore Building Line and Part 7 Section 7.8 will apply to the application. As part of the proposed development is seaward of the Foreshore Building Line, the planning officer will determine compliance with the Section 7.8 controls in Pittwater LEP 2014.</p> <p>Estuarine Risk Management The subject property has also been identified as affected by</p>

Internal Referral Body	Comments
	<p>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 B3.7 Estuarine Hazard Controls will apply to any proposed development of the site. As the Estuarine Planning Level does not apply to jetties, bridging ramps and pontoons the proposal is considered to satisfy the relevant requirements of the B3.7 Estuarine Hazard Controls.</p> <p>Development Seaward of Mean High Water Mark Proposed development works are located on Crown land below the Mean High Water Mark. Hence, Section D15.12: Development seaward of mean high water mark in Pittwater 21 DCP applies to the proposed development. DPI Fisheries has raised no objections to the development proposal and does not consider the proposal to constitute integrated development. On internal assessment the proposed development is unlikely to adversely impact on the visual amenity of the foreshore or water quality or estuarine habitat of the Pittwater waterway and the DA is considered to be able to satisfy the requirements of the Section D15.12 Controls subject to conditions.</p> <p>No other coastal planning or development controls relevant to the subject application were identified.</p>
Parks, reserves, beaches, foreshore	<p><i>Supported, without conditions</i></p> <p>The property adjoins Pittwater Waterway downslope. All development works must ensure that surface sediment runoff and/or erosion is controlled, managed and contained within the site boundaries. The screen planting conditioned in the Landscape Referral will reduce any potential visual impact when viewed from the waterway, and as such no concerns are raised.</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 (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 3 Coastal environment area

2.10 Development on land within the coastal environment area

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

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

Comment:

The proposed development is not expected to cause adverse impact to the coastal environment area.

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

Comment:

Council is satisfied that the proposed development is appropriately designed and sited to ensure adverse impact to the items referred to in subsection (1) is avoided.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

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

Comment:

Council is satisfied the proposed development is appropriately designed and sited in a manner that

avoids adverse impact to the coastal use area.

Division 5 General

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

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

Comment:

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

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

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

Comment:

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

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

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used 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?	Zone C3 : Yes Zone W1 : Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Zone C3 : Yes Zone W1 : Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
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Height of Buildings:	Zone C3 - 8.5m	2.5m	N/A	Yes
	Zone W1 - 5.17 AHD	1.47 AHD	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	Yes
5.7 Development below mean high water mark	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	No
7.10 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of Non-compliance

Development standard:	Limited development on foreshore area
Requirement:	Foreshore building line (FSBL)
Proposed:	Retaining walls and deck below FSBL
Percentage variation to requirement:	Non-numerical development standard

Assessment of Request to Vary a Development Standard

The following assessment of the variation to Clause 7.8 Limited development on foreshore area 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 7.8 Limited development on foreshore area 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:

- *The topography of the site rises steeply from the water to the dwelling. Adequate and safe access to the dwelling from the water is important for the functioning and amenity of the dwelling. The topography also justifies the works proposed to retaining walls, which are required to support/retain the slope of the land.*
- *The area identified as a 'deck' is confined to the northern corner of the foreshore area. The area to the south provides a connection between the waterway access stairs and considered an exception within the FBL. The existing sandstone retaining wall provides a level terraced platform in any case and, as such, proposing a slightly elevated micromesh platform is not considered unreasonable. It will provide a level surface and include handrails to ensure safety.*
- *The improvements to waterway access will increase the amenity of the site for the occupants while having no adverse impacts on the surrounding natural environment nor the amenity of the adjoining dwellings. The terrace created by the sandstone retaining wall is akin to a viewing platform rather than used for entertaining. The size of the terrace does not lend itself to be used for entertaining. As such, this terrace does not give rise to unreasonable amenity impacts to neighbours with regard to privacy.*

- 350

the MHWL.

The proposed retaining walls will provide improved land stability and will reduce the impact of erosion and sedimentation of the Pittwater waterway. The proposed deck is of a minimal bulk and scale, is designed to ensure retention of existing canopy trees and sited to preserve public access along the foreshore.

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 Limited development on foreshore area development standard and the objectives of the C3 Environmental Management zone. An assessment against these objectives is provided below.

Objectives of Development Standard

The underlying objectives of the standard, pursuant to Clause 7.8 – 'Limited development on foreshore area' of the PLEP 2014 are:

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

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

Comment:

The proposed works within the foreshore area are well integrated with landscape features and are not of a scale that would have an unreasonable impact on foreshore processes. The proposal, subject to deletion of the upper deck and retaining walls, will not have an unreasonable impact upon the significance and amenity of the foreshore area.

The proposal satisfies this objective.

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

Comment:

The proposed works are entirely on private property would not impact upon public access along the foreshore area and to the waterway. The proposed works are also well separated from the waterway area.

The proposal satisfies this objective.

Zone Objectives

The underlying objectives of the C3 Environmental Management zone are:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
- *To provide for a limited range of development that 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 and not visually prominent.*
- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*
- *To ensure the continued viability of ecological communities and threatened species.*

The proposal provides for a deck, retaining walls and steps that will be low impact with regard to visual presentation, impact on natural surroundings and impact on amenity. The development is not expected to unreasonably impact upon the natural significance of the land, foreshore vegetation and wildlife corridors.

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the C3 Environmental Management zone.

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

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

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

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation	Complies
Front building line	6.5m	Behind dwelling	N/A	Yes

Rear building line	Foreshore building line	Development permitted below FSBL	N/A	Yes
Side building line	S - 2.5m	Nil to 1.6%	36% to 100%	No
	N - 1m	1m	N/A	Yes
Building envelope	S - 3.5m	Within envelope	N/A	Yes
	N - 3.5m	Within envelope	N/A	Yes
Landscaped area	75% (678.8m ²)	80.1% (725m ²)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.8 Lower Western Foreshores and Scotland Island Locality	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
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.11 Access Driveways, Internal Driveway and Off Street Parking Requirements - Dwelling House - Scotland Island	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	No	Yes
B8.5 Construction and Demolition - Works in the Public Domain	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

Clause	Compliance with Requirements	Consistency Aims/Objectives
D8.1 Character as viewed from a public place	Yes	Yes
D8.3 Building colours and materials	Yes	Yes
D8.5 Front building line	N/A	N/A
D8.6 Side and rear building line	No	Yes
D8.8 Building envelope	Yes	Yes
D8.9 Landscaped Area	Yes	Yes
D8.11 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D8.13 Stormwater overflow	Yes	Yes
D8.14 Parking management	Yes	Yes
D8.15 Site disturbance	Yes	Yes
D8.16 Scenic Protection Category One Areas	Yes	Yes
D15.1 Character as viewed from a public place	Yes	Yes
D15.2 Scenic protection - General	Yes	Yes
D15.3 Building colours and materials	Yes	Yes
D15.12 Development seaward of mean high water mark	Yes	Yes
D15.13 Lateral limits to development seaward of mean high water mark	Yes	Yes
D15.14 Minimum frontage for waterfront development	No	Yes
D15.15 Waterfront development	No	Yes

Detailed Assessment

B8.3 Construction and Demolition - Waste Minimisation

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

D8.6 Side and rear building line

Description of Non-compliance

The control requires built structures other than fences and retaining walls to be setback a minimum of 2.5m from at least one side boundary and 1.0m from the other side boundary. In this case, the southern boundary is taken to be 2.5m and the northern boundary is taken to be 1.0m.

The proposed access stairs are setback between nil and 1.6m from the southern side boundary, representing a variation of between 36% and 100%.

The proposed waterfront deck is setback 1.0m from the northern boundary.

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 proposed access stairs and deck is considered relatively minor in scale and is compatible with similar structures in the locality. The siting of the stairs and deck does not result in any unreasonable view loss and does not create unreasonable visual impacts. In this regard, the desired future character of the locality is considered to be achieved.

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

Comment:

The bulk and scale of the proposed development is not considered significant as it sits at or near to ground level. Existing vegetation around the structure will assist in softening its bulk and scale.

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

Comment:

No views or vistas are unreasonably impacted as a result of the proposed shed.

- *To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.*

Comment:

As above, no views or vistas are unreasonably impacted.

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

Comment:

The proposed development is not expected to cause any unreasonable impact upon the privacy, amenity and solar access of adjacent properties.

- *Substantial landscaping, a mature tree canopy and an attractive streetscape.*

Comment:

Adequate landscaping is maintained on the site.

- *Flexibility in the siting of buildings and access.*

Comment:

The proposed development provides safe and functional pedestrian access to the site.

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

Comment:

Existing landscaped area and vegetation will serve to visually reduce the built form of the development.

- *To ensure a landscaped buffer between commercial and residential zones is established.*

Comment:

Not applicable, given the site does not adjoin a commercially zoned property.

Having regard to the above assessment, it is concluded that the proposed development is not 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.

D15.14 Minimum frontage for waterfront development

Description of Non-compliance

The control stipulates that allotments with a water frontage of less than 15.0m metres are generally only permitted to contain waterfront development such as a jetty, ramp and pontoon. Multiple facilities below mean high water mark (i.e. boatsheds, jetty and slipway etc.) will not be permitted.

As the water frontage of the site is 12.2m, the provision prohibiting multiple waterfront facilities applies. The proposal includes the construction of a skid ramp in addition to the existing jetty, which does not comply with this provision.

Merit Consideration

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

- *To minimise the individual and cumulative visual impact of waterfront development.*

Comment:

The site contains an existing timber jetty. The proposed skid ramp is to be sited between the southern side of the jetty and a reclaimed area of land on the southern adjacent property. While introducing multiple waterfront facilities to the site, the proposed skid ramp is not considered to unreasonably impact upon the visual quality of the waterfront or contribute to cluttered waterfront development. The seaward projection of the skid ramp is behind the sea wall on the adjacent site, meaning the structure will be screened by the jetty and sea wall. It will not be visually prominent when viewed from the waterway.

Having regard to the above assessments, it is concluded that the proposed development is consistent with the relevant outcomes of the P21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979.

Accordingly, this assessment finds that the proposal is **supported**, in this particular circumstance.

D15.15 Waterfront development

Description of non-compliance

The proposed development includes the construction of a skid ramp on the southern side of the existing jetty. While skid ramps are generally not favoured, the clause allows for a variation to this requirement, stating that Council may consider skid ramps where structures are unlikely to detract from the visual character of the foreshore, will not affect marine vegetation and will not restrict public foreshore access.

The proposed skid ramp will not obstruct public foreshore access and is not considered to have an adverse or unreasonable visual impact when viewed from the Pittwater Waterway. The proposed ramp is minimal in height and will be constructed of timber. The applicant has submitted an Aquatic Ecology Assessment report. The report concludes that the proposal can be undertaken with no direct impact on marine habitats that support marine vegetation and minimal risk of impact to other unvegetated marine habitats.

The proposal has been reviewed by Council's Coastal Officer who have raised no objection to the works and associated impacts to the surrounding natural environment. The application is supported by a response from the DPI Fisheries identifying no adverse impact upon the key fish habitats (subject to conditions).

Merit consideration

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

- *Waterfront development does not have an adverse impact on the water quality and estuarine habitat of Pittwater.*

Comment:

The development application was referred to Department of Primary Industries (Fisheries) with no objection raised subject to conditions. The application provided an Aquatic Ecology Assessment Report, and a Geotechnical Assessment Report and which supported the proposed works. An Aquatic Ecology Assessment Report prepared for the site was assessed against the Pittwater LEP 2014 and Pittwater 21 DCP and was supported by Council's Natural Environment - Coastal Section subject to conditions.

Council's Bushland and Biodiversity, and Coast and Catchments Officers have also reviewed the proposal having regard to water quality and habitat and have raised no objections subject to conditions included in the recommendation of the report. In turn, it is considered the proposal will not have an adverse impact on the water quality or estuarine habitat of Pittwater.

As a result, the proposal (subject to conditions) has been designed and sited to avoid an unreasonable or adverse impact on this and the development therefore achieves this outcome.

- *Public access along the foreshore is not restricted.*

Comment:

Notwithstanding the location and dimensions of the boat shed, public access along the foreshore will not be restricted as the development incorporates a decking area around the structure, providing safe and level public access along the foreshore.

- *Waterfront development does not encroach on navigation channels or adversely affect the use of ferries and service vessels or use of the waterway by adjoining landowners.*

Comment:

The siting of the proposed skid ramp does not encroach upon any navigation channels and will not impact upon the use of the waterway by adjoining landowners.

- *Structures blend with the natural environment.*

Comment:

The proposed skid ramp will appropriately blend with the surrounding natural environment..

- *Structures are not detrimental to the visual quality, water quality or estuarine habitat of the Pittwater Waterway.*

Comment:

The proposed development will be visually consistent and comparable with surrounding waterfront development. It is considered the proposed development will not be detrimental to the visual quality, water quality or estuarine habitat of the Pittwater Waterway, subject to conditions included in the recommendation of this report.

- *To promote a mix of commercial waterfront development for the accommodation of boats, their repair and maintenance, and for organised waterfront development.*

Comment:

The proposal is not a commercial waterfront development. This outcome is therefore not applicable.

- *Waterfront development which does not comply with the outcomes of this clause are removed.*

Comment:

As demonstrated above, the proposed waterfront development complies with the outcomes of this clause and is considered to be both appropriate and acceptable.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$ 791 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 158,268.

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 7.8 Limited Development on Foreshore Area 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 involves landscaping works, stairs, decking, timber skid boat ramp and remedial work to existing timber jetty which is ancillary to a dwelling house, and is referred to the Northern Beaches Local Planning Panel (NBLPP) for determination due to variation of the non-numerical development standard Clause 7.8 Limited Development on Foreshore Area under the PLEP 2014.

The critical assessment issues of; impact of the proposed structures within the foreshore area and impact of the proposed skid ramp contributing to additional waterfront development, are not considered to result in an unreasonable built form or amenity impacts upon the foreshore area and waterfront.

However, the Clause 4.6 variation request submitted by the applicant excludes elements which are also within the Foreshore Area, being the upper deck (RL 10.95) and associated retaining walls, earthworks and garden beds, which has been excluded from the approved elements of the application, by way of condition.

No submissions were received in response to the public exhibition of the application.

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, subject to the conditions imposed.

The proposal has therefore been recommended for **APPROVAL** subject to conditions.

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

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2023/0322 for Landscaping works, stairs, decking, timber skid boat ramp and remedial work to existing timber jetty ancillary to a dwelling house on land at Lot 64 DP 810165, 109 Florence Terrace, SCOTLAND ISLAND, Lot LIC 525364, 109 Florence Terrace, SCOTLAND ISLAND, 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
2101-DA-01 Issue B	30/06/2022	Jessica McGowan Design
2101-DA-02 Issue B	30/06/2022	Jessica McGowan Design
2101-DA-04 Issue B	30/06/2022	Jessica McGowan Design
2101-DA-05 Issue B	30/06/2022	Jessica McGowan Design
2101-DA-06 Issue B	30/06/2022	Jessica McGowan Design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Arboricultural Impact Assessment and Management Plan	June 2022	Botanics Tree Wise People
Aquatic Ecology Assessment	August 2022	Marine Pollution Research
Bushfire Assessment Report (Ref: 109Flo-01)	27/05/2022	Bushfire Consultancy Australia
Ecological Assessment	14/06/2022	East Coast Ecology

Geotechnical Assessment (Ref: J3520)	24/02/2022	White Geotechnical Group
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b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

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

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

2. 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	14/04/2023

(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 \$791.34 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 \$158,268.00.

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. **Footing Design Near Trees to be Retained**

- a) Footing structural layout plans for the works including timber decks, retaining walls and stairs shall be developed in co-ordination with an Arborist with AQF minimum Level 5 qualifications in arboriculture, and a qualified Structural Engineer, following a tree root mapping investigation (where practicable) near all existing trees within 5 metres of the works, to locate critical tree roots and recommend footing design and locations for the construction works.
- b) The Arborist shall review, comment, recommend design revision as required and approve the footing layout, to ensure the locations of footings will be manageable in terms of tree protection measures.
- c) The Arborist shall submit certification to the Certifier, that the locations of the footings are accepted.
- d) The agreed footing structural layout plans shall be submitted to the Principal Certifier for approval prior to the issue of a Construction Certificate.

Reason: Tree protection.

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 Principal Certifier prior to issue of

Construction Certificate.

Reason: To protect native vegetation.

9. **Amendments to the approved plans (Only Works Covered by Clause 4.6 Variation)**

The following amendments are to be made to the approved plans:

- The deck at RL 10.95 and related retaining walls, earthworks and garden beds in this vicinity are not approved and must be deleted. The area is to be retained as soft landscaping at the existing ground level.

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

Reason: To ensure the works approved within the Foreshore Area are only those covered by the applicants Clause 4.6 Variation submitted with the application and the development minimises unreasonable impacts upon the foreshore area.

10. **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.

11. **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.

12. **Estuarine Hazard Design Requirements**

All development or activities must be designed and constructed such that they will not increase the level of risk from estuarine processes for any people, assets or infrastructure in surrounding properties; they will not adversely affect estuarine processes; they will not be adversely affected by estuarine processes.

Reason: To minimise risks associated with coastal hazards for development in an estuarine environment.

13. **Structural Engineering for Estuarine Risk**

Structural engineering design for the development shall be prepared, with input as necessary from a chartered professional engineer with coastal engineering as a core competency, to ensure that for its design life (taken to be 100years unless otherwise justified and accepted by Council) the development is able to withstand the the wave impact forces and loadings likely to impact the proposed development at the foreshore.

The potential for component fatigue (wear and tear) should also be recognised for the less severe, but more frequent, wave impact loadings.

Reason: To ensure structural engineering is prepared by appropriately qualified professionals

14. **Engineers Certification of Plans**

The structural design shall be prepared by and each plan/sheet signed by, a registered professional civil or structural engineer with chartered professional status (CP Eng) who has an appropriate level of professional indemnity insurance and shall be submitted to the Certifier prior to the release of the Construction Certificate.

Reason: To ensure structural engineering is prepared by an appropriately qualified professional

15. **Authority to Lawfully Use and Occupy Crown Land or Waterway**

An executed licence agreement from the relevant NSW government agency governing the use and occupation of Crown land is required to be obtained prior to the issue of a construction certificate.

Reason: To ensure that lawful authority under the Crown Land Management Act 2016 to use and occupy Crown land or waterway is obtained before construction commences.

16. **Compliance with Standards**

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

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

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

17. **Sydney Water "Tap In"**

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

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

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

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

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

18. **Waste Management Plan**

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

19. **Project Arborist**

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

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

a) excavation and fill works around trees 1, 2, 4, 5, 6, and the tree adjacent to the 'new deck' at RL 10.95 not assessed in the Arboricultural Impact Assessment.

All tree protection measures specified must:

- a) be in place before work commences on the site, and
- b) be maintained in good condition during the construction period, and
- c) remain in place for the duration of the construction works.

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

Note:

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

Reason: Tree protection.

20. **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 receiving waters from the effects of sedimentation and erosion from the site

DURING BUILDING WORK

21. Requirement to notify about new Acid Sulfate Soils evidence

Any new information revealed during excavation works that has the potential to alter previous conclusions about Acid Sulfate Soils shall be immediately notified to the Council and the Principal Certifier and a report be obtained from a suitably qualified person. Any recommendations provided by the report are to be complied with during works.

Reason: To protect the environment.

22. Protection of Rock and Sites of Significance

All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.

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

Reason: Preservation of significant environmental features.

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/Project Arborist to the Principal Certifier,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
 - ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
 - x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
 - xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

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

Reason: Tree and vegetation protection.

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 licensed 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. **Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998)];
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

28. **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.

29. **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.

30. **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.

31. **Waste Water disposal areas**

Proposed works shall not impact on any waste water disposal (Land Application Areas)
Building materials and equipment shall not be stored within the waste water disposal areas on site.

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

32. **Pollution Control**

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

Reason: To protect the surrounding environment, and ensure that pollutants and building associated waste do not enter receiving waters.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

33. **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 qualifications 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.

34. **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 Pittwater Spotted Gum Forest Endangered Ecological Community.

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.

35. **Clearing for Asset Protection Zones**

Clearing of vegetation for APZ establishment must only occur within the surveyed and marked APZ boundaries. No clearing is to be undertaken outside of the APZ boundaries. Clearing for APZ purposes will prioritise the removal of introduced species over the removal of native vegetation.

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

Reason: To protect native vegetation and wildlife.

36. **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.

37. **Priority Weed Removal and Management**

All Priority weeds (as specified in the Northern Beaches Local Weed Management Plan) within the development footprint are to be removed using an appropriate control method.

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

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

38. **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.

39. **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

40. **Landscape Maintenance**

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

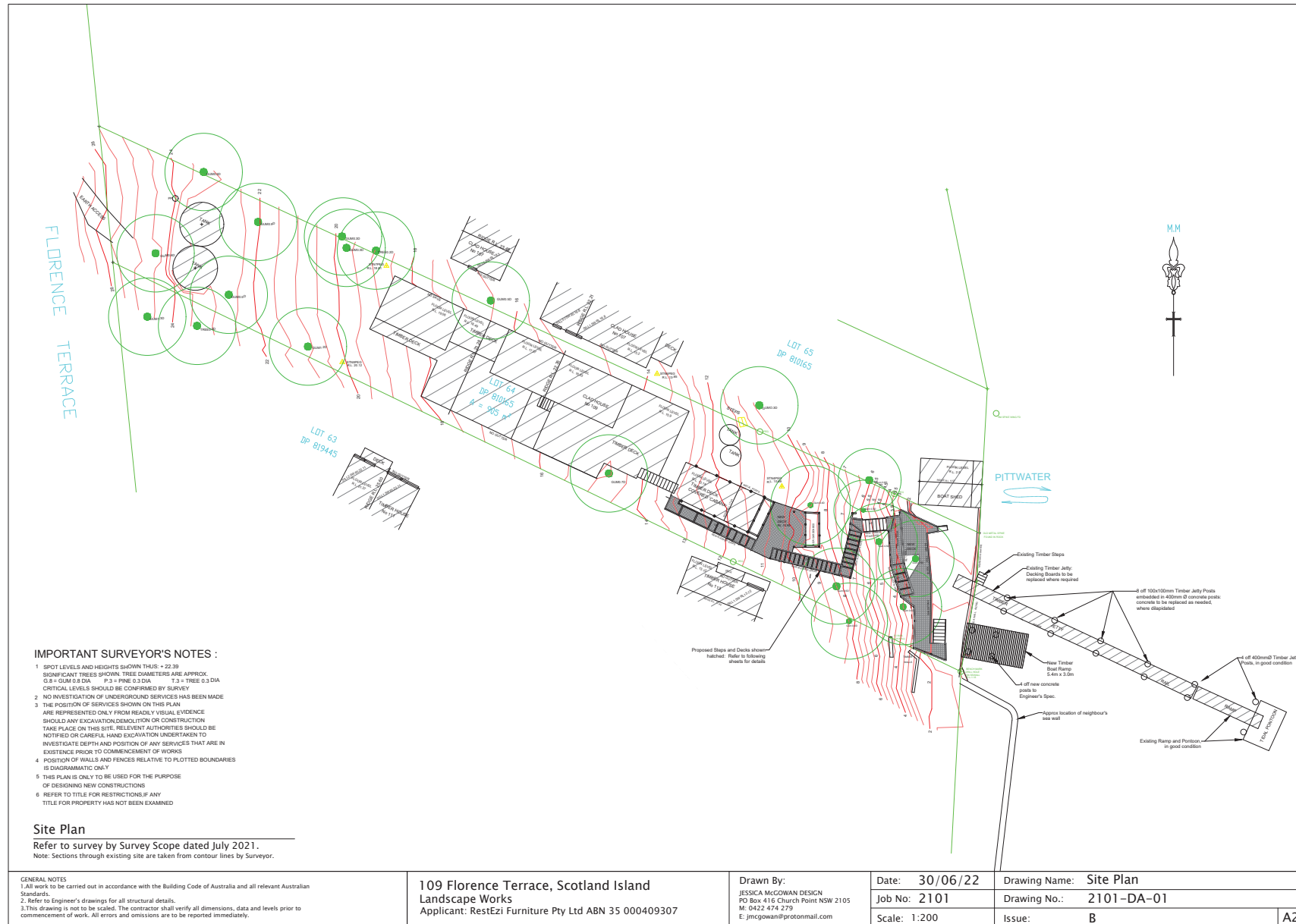
The approved landscape area shall in perpetuity remain as planting under the development consent.

Reason: To maintain local environmental amenity.

41. **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.





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Clause 4.6 variation request - Limited development on foreshore area

109 Florence Terrace, Scotland Island

Foreshore building line

1.0 Introduction

This document has been prepared having regard to the Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) at [42] – [48], [*Four2Five Pty Ltd v Ashfield Council* \[2015\] NSWCA 248](#), *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

2.0 Pittwater Local Environmental Plan 2014 (“PLEP”)

2.1 Clause 7.8 – Foreshore building line

Pursuant to clause 7.8(2) of PLEP development consent must not be granted for development on land in the foreshore area except for the following purposes -

- (2) *Development consent must not be granted for development on land in the foreshore area except for the following purposes—*
 - (a) *the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, but only if the development will not result in the footprint of the building extending further into the foreshore area,*
 - (b) *boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

The objectives of the foreshore building line control are as follows:

- (a) *to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area,*
- (b) *to ensure continuous public access along the foreshore area and to the waterway.*

The application proposes landscaping works relating to the foreshore area which include retaining walls and terraces which sit within the foreshore building line. The image below shows the foreshore building line location



Figure 1 – Foreshore Building Line

The proposed elements within the foreshore building line relate to retaining walls and terracing adjacent to the foreshore area, shown below:

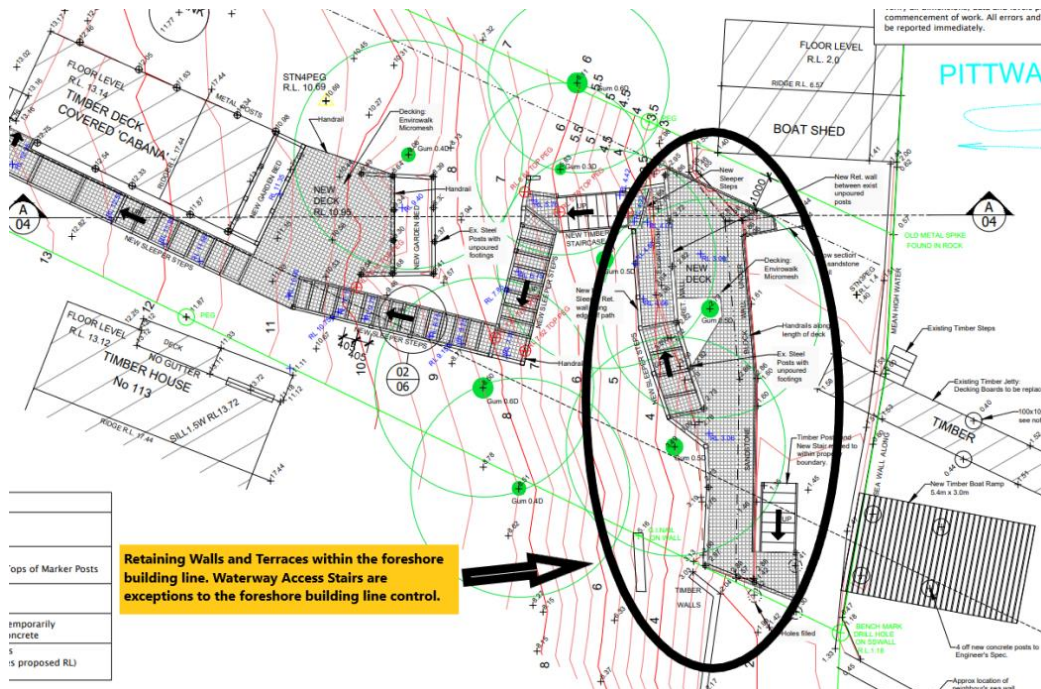


Figure 2: Breaches to the foreshore building line

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of PLEP provides:

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

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“Initial Action”) provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant’s written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner. At [90] of *Initial Action* the Court held that:

“In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”. If objective (b) was the source of the Commissioner’s test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test.”

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of PLEP provides:

- (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.*

This clause applies to the clause 7.8 Foreshore building line standard.

Clause 4.6(3) of PLEP provides:

- (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.*

The proposed development does not comply with the foreshore building line provisions at clause 7.8 of PLEP however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be

sufficient environmental planning grounds to justify contravening the development standard.

The relevant arguments are set out later in this written request.

Clause 4.6(4) of PLEP provides:

- (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 Director-General has been obtained.*

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]).

The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest ***because*** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]).

The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 5th May 2020, attached to the Planning Circular PS 18-003 issued on 5th May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of PLEP provides:

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

As these proceedings are the subject of an appeal to the Land & Environment Court, the Court has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), without obtaining or assuming the concurrence of the Secretary under cl 4.6(4)(b), by reason of s 39(6) of the Court Act.

Nevertheless, the Court should still consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 7.8 of PLEP from the operation of clause 4.6.

3.0 Relevant Case Law

In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 continue to apply as follows:

- 17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
- 18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*

19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 7.8 of PLEP development standards?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 7.8 standard and the objectives for development for in the zone?

4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 7.8 of PLEP?

4.0 Request for variation

4.1 Is clause 7.8 of PLEP development standards?

Clause 7.8 prescribes a provision that seeks to limit the extent of development within the foreshore area and accordingly is considered to be a development standard to which clause 4.6 PLEP applies.

4.2 Clause 4.6(3)(a) – Whether compliance with the development standard is unreasonable or unnecessary

The common approach for an applicant to demonstrate that compliance with a development standard is unreasonable or unnecessary are set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827.

The first option, which has been adopted in this case, is to establish that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Consistency with objectives of the foreshore building line standard

An assessment as to the consistency of the proposal when assessed against the objectives of the standard is as follows:

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

Comment:

The portions of the development located within the prescribed foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area and to that extent this objective is achieved notwithstanding the foreshore building line breaching elements proposed.

The existing sandstone retaining wall adjacent to the foreshore is the dominant built form character and consistent with the provisions of clause D8.11 of P21 DCP which prescribes that preference is given to the use of sandstone where retaining walls are

visible from a public place. The proposed timber sleeper retaining walls within the FBL are located behind the sandstone wall and of a smaller scale which does not give rise to adverse impacts to the amenity of the area. The proposed micromesh materiality also ensures that the structures blend with, and will be screened by, the surrounding vegetation, which is to be retained within the foreshore area and across the site as a whole.

All proposed structures are well above the Estuarine Planning Level, ensuring that there will be no impact upon tidal processes and wave action. Further, the works have been reviewed with respect to the geotechnical hazard that affects the foreshore area, with certification that the works can be undertaken to avoid unacceptable risk to the foreshore.

The accompanying arborist report details the protection and retention of the trees along the foreshore.

The consent authority can be satisfied that the proposed development within the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area.

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

Comment: The proposed foreshore building line encroaching elements do not impact on any public access to the foreshore and waterways.

Consistency with zone objectives

The subject site is zoned E3 Environmental Management Zone pursuant to the provisions of PLEP. Dwelling houses are permissible in the zone with the consent of council. The stated objectives of the E3 zone are as follows:

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

Response: The proposed works have been designed to limit the impact to the local environment. No significant excavation is proposed to achieve the works with piers proposed to support the elevated terrace. As such, no trees will be impacted by the works and will be retained. Tree protection recommendations have been provided within the arborist report.

The micromesh material will sit above the existing sandstone retaining wall. The sandstone retaining wall will be the dominant characteristic when viewed from the water and is the desired materiality in this area. The proposed accessed stairs and small deck areas will not be prominent features.

The proposed timber sleeper retaining walls will not require any significant excavation to construct apart from excavation to hold the footings. This will minimise impacts to the local environment.

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

Response: The works provide improved access to the water from the dwelling and will not have adverse impacts on the environmental value of the area.

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

Response: The application relates to landscaping works to improve water access from the dwelling. The works have been integrated into the landform while also limiting the amount of excavation and impacts to trees. As such, the landscape will remain visually prominent over the built structures. This objective is achieved.

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

Response: The proposal retains all of the prescribed trees on the site with only Excavation has been limited by proposing elevated terrace with timber retaining walls set on piers. The impacts on foreshore vegetation and wildlife habitat will be minimal. This objective is achieved.

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

Response: As mentioned above, no trees are to be removed and excavation has been limited ensuring that no unreasonable impacts are anticipated to ecological communities and threatened species. This objective is achieved.

The proposed works are permissible and consistent with the stated objectives of the zone.

The non-compliant component of the development, as it relates to foreshore building line, demonstrates consistency with objectives of the E3 Environmental Management zone and the height of building standard objectives. Adopting the first option in *Wehbe* strict compliance with the height of buildings standard has been demonstrated to be unreasonable and unnecessary.

4.3 Clause 4.6(4)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

23. *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.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.*

The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].

Sufficient environment planning grounds

In this regard, I have formed the considered opinion that sufficient environmental planning grounds exist to justify the variation. Specifically, those grounds include:

- The topography of the site rises steeply from the water to the dwelling. Adequate and safe access to the dwelling from the water is important for the functioning and amenity of the dwelling. The topography also justifies the works proposed to retaining walls, which are required to support/retain the slope of the land.
- The area identified as a ‘deck’ is confined to the northern corner of the foreshore area. The area to the south provides a connection between the waterway access stairs and considered an exception within the FBL. The existing sandstone retaining wall provides a level terraced platform in any case and, as

such, proposing a slightly elevated micromesh platform is not considered unreasonable. It will provide a level surface and include handrails to ensure safety.

- The improvements to waterway access will increase the amenity of the site for the occupants while having no adverse impacts on the surrounding natural environment nor the amenity of the adjoining dwellings. The terrace created by the sandstone retaining wall is akin to a viewing platform rather than used for entertaining. The size of the terrace does not lend itself to be used for entertaining. As such, this terrace does not give rise to unreasonable amenity impacts to neighbours with regard to privacy.
- The terrace will use Envirowalk Micromesh and be elevated above the ground. The aperture of the mesh ensures it is permeable and will allow for soft landscaping beneath. The impact to the local environment is to be minimised with the use of this material.
- The proposed timber sleeper retaining walls within the FBL are of a reasonable scale (approximately 1m) and utilise natural materials which will complement the foreshore area. The significant trees located along the foreshore will provide further screening of the retaining walls and is consistent with the Zone and the desired future character of the Scotland Island locality.
- The extent of the breach is considered minor and will not have any unreasonable impacts on neighbours, local environment or the scenic value of the foreshore area when viewed from the water. The existing trees along the foreshore area will be retained and will provide softening and screening of the proposed works. The trees will continue to be the dominant character when viewed from the water.

Allowing for the development to appropriately respond to the Applicant's circumstances and the individual context of the site, including the siting & levels of the existing dwelling and the steep terrain of the site, promotes good design and amenity of the built environment, and the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants, consistent with objects (g) and (h) of the EP&A Act.

Furthermore, allowing for a variation to the foreshore building line that arises as a result of the need/desire to more readily comply with the provisions of Council's DCP

promotes the orderly and economic development of the land, consistent with object (c) of the EP&A Act.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposal promotes the orderly and economic use and development of land (1.3(c)).
- The variation facilitates good design and enhanced amenity (1.3(g)).
- The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(h)).

It is noted that in *Initial Action*, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. *The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.*

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

4.4 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 7.8 and the objectives of the E3 Environmental Management Zone

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

Preston CJ in *Initial Action* (Para 27) described the relevant test for this as follows:

"The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be

in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii)."

As demonstrated in this request, the proposed development is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

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

4.5 Secretary's concurrence

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

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

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

Concurrence of the Secretary can therefore be assumed in this case.

5.0 Conclusion

Having regard to the clause 4.6 variation provisions we have formed the considered opinion:

- (a) that the contextually responsive development is consistent with the zone objectives, and

- (b) that the contextually responsive development is consistent with the objectives of the foreshore building line standard, and
- (c) that there are sufficient environmental planning grounds to justify contravening the development standard, and
- (d) that having regard to (a), (b) and (c) above that compliance with the foreshore building line standard is unreasonable or unnecessary in the circumstances of the case, and
- (e) that given the developments ability to comply with the zone and foreshore building line standard objectives that approval would not be antipathetic to the public interest, and
- (f) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning; and
- (g) Concurrence of the Secretary can be assumed in this case.

Pursuant to clause 4.6(4)(a), the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

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

As such, I have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a foreshore building line variation in this instance

Boston Blyth Fleming Pty Limited

William Fleming
BS, MPLAN
Director

ITEM 5.4**DA2023/0414 - 1973 PITTWATER ROAD, BAYVIEW -
ALTERATIONS AND ADDITIONS TO AN EDUCATIONAL
ESTABLISHMENT, ST LUKE'S GRAMMAR SCHOOL****AUTHORISING MANAGER** Steve Findlay**TRIM FILE REF** 2023/626401**ATTACHMENTS**
1 [↓ Assessment Report](#)
2 [↓ Site Plan & Elevations](#)
3 [↓ Clause 4.6](#)**PURPOSE**

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of 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 the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2023/0414 for alterations and additions to an educational establishment (St Luke's Grammar School) on land at Lot 1 DP 304830, 1973 Pittwater Road, BAYVIEW, Lot A DP 360274, 1973 Pittwater Road, BAYVIEW and Lot 20 DP 635214, 1973 Pittwater Road, BAYVIEW subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0414
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Responsible Officer:	Nick Keeler
Land to be developed (Address):	Lot 1 DP 304830, 1973 Pittwater Road BAYVIEW NSW 2104 Lot A DP 360274, 1973 Pittwater Road BAYVIEW NSW 2104 Lot 20 DP 635214, 1973 Pittwater Road BAYVIEW NSW 2104
Proposed Development:	Alterations and additions to an educational establishment (St Luke's Grammar School)
Zoning:	R2 Low Density Residential SP2 Infrastructure
Development Permissible:	Yes, under SEPP (Transport and Infrastructure) 2021
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Anglican Schools Corporation
Applicant:	Anglican Schools Corporation

Application Lodged:	24/04/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Community facility
Notified:	01/05/2023 to 15/05/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 17.6%
Recommendation:	Approval

Estimated Cost of Works:	\$ 1,759,740.00
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EXECUTIVE SUMMARY

This application seeks consent for alterations and additions to an educational establishment, known as St Luke's Grammar School..

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to a variation

to the height of buildings development standard by more than 10%. The maximum height of the proposed development has been measured at 9.98m, which represents a variation of 17.4% to the prescribed 8.5m building height limit under the PLEP 2014

The clause 4.6 request for the non-compliance with height standard arises from the site being partially excavated underneath the existing building (measured based on *Merman* caselaw), creating a 17.4% variation for a small section of the building.

Incidentally, based on extrapolated natural ground levels (caselaw of *Bettar*), the height would only be measured at a maximum of 8.2m (which would comply with the standard).

The Clause 4.6 variation is well founded and is supported.

No public submissions were received.

Overall, it is considered that the proposal has been designed appropriately and will 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 character of the locality, while being built primarily upon the existing footprint and not resulting in the removal of any significant vegetation or require significant alteration to the landform.

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

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for alterations and additions to the existing educational establishment known as St Luke's Grammar School.

The proposed development includes the following elements:

Ancillary Works

- A new tiered seating area is proposed to the north of the existing hall. This provides for outdoor seating to replace the existing timber teared seating in the same location.
- Relay existing paving to the north of the existing wall.
- New stair to replace existing stair between hall building and classroom building to the west. A new roof will be provided over the stair to provide all weather access and connection between the two buildings.

Hall Building

Lower Level

- Extend office at northwest corner, within the existing footprint.

Ground Level

- Delete existing store to the northeast corner of hall to provide for additional floor area for the hall.
- Addition to the northwest corner of hall over existing hard surface area to provide for additional floor area for the hall.
- Demolish stage.
- New bi-folding doors to northern elevation of hall.
- Addition to southwest corner to extend library.
- Internal alterations to the library including removal of canteen and store room.

Canteen

It is proposed to provide a new canteen within the existing basement level of the central classroom building. The canteen is contained within the existing footprint, retaining existing floor levels and provides for a fit out and new doors and windows as detailed on the architectural plans.

All works are located over existing hard surface areas and do not reduce the area of landscaping on site.

AMENDED PLANS

During the assessment, Council requested the applicant provide a report outlining the proposal's consistency with the provisions of the BCA. As a result, the applicant proposed to delete the canteen from the basement level of the central classroom building and instead propose a reconfiguration of the existing canteen on the western side of the sports hall.

In accordance with the provisions of the Northern Beaches Community Participation Plan, re-notification of the application was not required. The amendments are considered to be minor and will not alter the environmental impact on nearby properties and the public domain.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards

SITE DESCRIPTION

Property Description:	<p>Lot 1 DP 304830 , 1973 Pittwater Road BAYVIEW NSW 2104</p> <p>Lot A DP 360274 , 1973 Pittwater Road BAYVIEW NSW 2104</p> <p>Lot 20 DP 635214 , 1973 Pittwater Road BAYVIEW NSW 2104</p>
Detailed Site Description:	<p>The subject site consists of three (3) allotments located on the western side of Pittwater Road and northern side of Loquat Valley Road.</p> <p>The site is irregular in shape with a primary frontage of 71.29m along Pittwater Road and a secondary frontage of 112.57m. The site has a surveyed area of 8,080m².</p> <p>The site is located within the SP2 Infrastructure and R2 Low Density Residential zones and accommodates the St Luke's Grammar School, Bayview campus.</p> <p>The site falls approx. 8m from the north towards the south. The site is identified as being flood prone and is located in the coastal environment and use areas.</p> <p>The site contains multiple building associated with the school, a synthetic turf area, tennis court, grassed and garden areas with several trees.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by low density residential dwellings.</p>

Map:



SITE HISTORY

There have been numerous development consents pertaining to the educational establishment over the last 30 years. A search of Council's records has revealed the following relevant history from the last 10 years:

Application **N0080/13** for Alterations and additions to existing staff room was approved on 27/05/2013 by Council staff.

Application **DA2022/2107** for Alterations and additions to an educational establishment (St Luke's Grammar School) was approved on 07/02/2023 by Council staff.

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 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 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 clause 4.6 variation request and a BCA report.</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 Matters for Consideration	Comments
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 01/05/2023 to 15/05/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><i>Supported, subject to conditions</i></p> <p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. The following Report is required prior to further consideration by Building Control;</p> <p><u>Building Code of Australia Report (Class 2-9)</u> A 'Building Code of Australia (BCA) Assessment Report' / 'Fire Audit Report' from an appropriately qualified Registered Certifier will need to be submitted to address the following :</p> <p>The report is to detail the extent to which the existing building (relevant affected parts) does or does not comply with the deemed-to-satisfy provisions of Sections C, D, E and F of the Building Code of Australia. The report is to also provide recommendations with respect to the existing building / works required to ensure that the specified measures and facilities contained in the existing building, including any modifications to be made by the proposed development are appropriate for its intended use to:</p> <p>i) restrict the spread of fire from the building to other buildings nearby, and</p>

Internal Referral Body	Comments
	<p>ii) protect persons using the building, and to facilitate their egress from the building in the event of fire, and iii) as required, provide access for persons with a disability, and iv) provide facilities and services appropriate for the development.</p> <p>The amended 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, without conditions</p> <p>General Comments This proposal seeks approval for the construction alterations/additions to the existing educational establishment. The proposal is described in detailed in the architectural plans submitted with the application and are summarised below:</p> <p>Ancillary Works</p> <ul style="list-style-type: none"> • A new tiered seating area is proposed to the north of the existing hall. This provides for outdoor seating to replace the existing timber teared seating in the same location. • Relay existing paving to the north of the existing wall. • New stair to replace existing stair between hall building and classroom building to the west. A new roof will be provided over the stair to provide all weather access and connection between the two buildings. <p>Hall Building Lower Level</p> <ul style="list-style-type: none"> • Extend office at northwest corner, within the existing footprint. <p>Ground Level</p> <ul style="list-style-type: none"> • Delete existing store to the northeast corner of hall to provide for additional floor area for the hall. • Addition to the northwest corner of hall over existing hard surface area to provide for additional floor area for the hall. • Demolish stage.

Internal Referral Body	Comments
	<ul style="list-style-type: none"> • New bi-folding doors to northern elevation of hall. • Addition to southwest corner to extend library. • Internal alterations to the library including removal of canteen and store room. <p>Canteen</p> <p>It is proposed to provide a new canteen within the existing basement level of the central classroom building. The canteen is contained within the existing footprint, retaining existing floor levels and provides for a fit out and new doors and windows as detailed on the architectural plans.</p> <p>All works are located over existing hard surface areas and do not reduce the area of landscaping on site.</p> <p>Environmental Health notes there is no increase in student numbers or hours of operation.</p> <p>Additionally that smoke or odour from the new canteen or noise is not likely to impact neighbouring residential receivers .</p>
Environmental Health (Food Premises, Skin Pen.)	<p><i>Supported, subject to conditions</i></p> <p>General Comments</p> <p>This proposal seeks approval for the construction alterations/additions to the existing educational establishment. The proposal is described in detailed in the architectural plans submitted with the application and are summarised below:</p> <p>Ancillary Works</p> <ul style="list-style-type: none"> • A new tiered seating area is proposed to the north of the existing hall. This provides for outdoor seating to replace the existing timber teared seating in the same location. • Relay existing paving to the north of the existing wall. • New stair to replace existing stair between hall building and classroom building to the west. A new roof will be provided over the stair to provide all weather access and connection between the two buildings. <p>Hall Building</p> <p>Lower Level</p> <ul style="list-style-type: none"> • Extend office at northwest corner, within the existing footprint. <p>Ground Level</p> <ul style="list-style-type: none"> • Delete existing store to the northeast corner of hall to provide for additional floor area for the hall.

Internal Referral Body	Comments
	<ul style="list-style-type: none"> • Addition to the northwest corner of hall over existing hard surface area to provide for additional floor area for the hall. • Demolish stage. • New bi-folding doors to northern elevation of hall. • Addition to southwest corner to extend library. • Internal alterations to the library including removal of canteen and store room. <p>Canteen It is proposed to provide a new canteen within the existing basement level of the central classroom building. The canteen is contained within the existing footprint, retaining existing floor levels and provides for a fit out and new doors and windows as detailed on the architectural plans. All works are located over existing hard surface areas and do not reduce the area of landscaping on site.</p> <p>Environmental Health supports the proposal with conditions</p>
NECC (Bushland and Biodiversity)	<p>Supported, subject to conditions</p> <p>The proposal seeks approval for alterations and additions to an educational establishment. The comments in this referral relate to the following applicable controls and provisions:</p> <ul style="list-style-type: none"> • SEPP (Resilience and Hazards) - Coastal wetlands and proximity area • Pittwater 2014 LEP - Part 7.6 Biodiversity Protection • Pittwater 21 DCP - Clause B4.6 Wildlife Corridors <p>The proposed works will require the removal of landscaped areas that have been heavily disturbed and as a result are not likely to impact on native flora and fauna. The proposed works will occur in land identified within the Coastal Wetlands and Littoral Rainforest Area Map, however are unlikely to interfere with the ecological processes of the wetland.</p> <p>No native vegetation or fauna habitat will be impacted, the development is designed, sited and will be managed to avoid any significant adverse environmental impact.</p>
NECC (Coast and Catchments)	<p>Supported, without conditions</p> <p>The property is located within the Coastal Use and Environment</p>

Internal Referral Body	Comments
	Area, however the development is unlikely to impact on these attributes.
NECC (Development Engineering)	<p>Supported, subject to conditions</p> <p>27/06/2023: Development Application is for alterations and additions to the existing educational establishment including additions to the existing hall building, alterations to create a canteen within an existing footprint, new stairs and roof alterations to the hall. The proposed works are located within the existing building footprint and do not result in additional hard surface areas. No objections to the proposal subject to conditions as recommended.</p>
NECC (Flooding)	<p>Supported, subject to conditions</p> <p>The development proposes to refurbishment of the existing hall building and relocation of the canteen within an existing educational establishment at the site. The proposed works are located within the existing building footprint and do not result in additional hard surface areas. There are no flood related objections.</p>
NECC (Riparian Lands and Creeks)	<p>Supported, subject to conditions</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Resilience and Hazards) 2021; • Relevant LEP and DCP clauses; and • Northern Beaches Water Management for Development Policy <p>The site is near Pittwater estuary and as such the development must not significantly impact on the biophysical, hydrological or ecological integrity of the estuary, or the quantity and quality of surface and ground water flows that it receives. Under the Water Management (General) Regulation 2018 hydro line spatial data mapping, a watercourse is mapped through the site within 40 metres of the proposal but it is piped. The Waterfront Land e-tool indicates that without a watercourse bed or bank, or any watercourse features, a controlled activity approval is not required – no watercourse. The Controlled activity exemption e-tool corroborates this outcome because the watercourse fits the description of concrete lined or piped channels. Therefore, it appears unlikely that a controlled activity permit is required. Geotechnical investigation found groundwater. Please see Water Management referral for comments. Appropriate 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>
NECC (Water Management)	Supported, subject to conditions

Internal Referral Body	Comments
	<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>The proposal does not appear to change the total impervious area of the site.</p> <p>Geotechnical investigation encountered groundwater but the proposed construction method avoids the need to dewater. If dewatering is required then the applicant must contact catchment@northernbeaches.nsw.gov.au for advice on Council's groundwater dewatering permit prior to excavating. Approvals must be obtained from WaterNSW to undertake construction if large quantities of groundwater are to be removed.</p>
Strategic and Place Planning (Urban Design)	<p>Supported, without conditions</p> <p>This advice is provided as an internal referral from the Urban Design Unit to the Development Assessment Officer for consideration and coordination with the overall assessment.</p> <p>The application seeks consent for alterations and additions to the existing educational establishment comprising of additions to the existing hall building, alterations to create a canteen within an existing footprint, new stairs and roof alterations to the hall. The works have been designed to be consistent with the existing structures on site.</p> <p>Urban Design raises no objection to the proposed development.</p> <p>Please note: Regarding any view impacts and any impacts on solar amenity and overshadowing, these matters will be dealt with under the evaluation of Council Planning Officer. Any impacts of non-compliances regarding heritage will be dealt with under the evaluation of Council Heritage Officers, and any Landscape non-compliances will be dealt with under the evaluation of Council Landscape Officers.</p>

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

Transport for NSW (TfNSW)

Section 2.118 - Development with frontage to classified road states:

The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—

- (a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
- (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—*
- (i) the design of the vehicular access to the land, or*
 - (ii) the emission of smoke or dust from the development, or*
 - (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land,*
- and*
- (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

Comment:

The proposal will not impact the access arrangements to Pittwater Road and would not result in the enrolment of additional students. No further consideration or referral advice is required from TfNSW.

Part 3.4 - SCHOOLS

Part 3.4, Section 3.36 of Chapter 3 stipulates that:

(6) Before determining a development application for development of a kind referred to in subclause (1), (3) or (5), the consent authority must take into consideration—

(a) the design quality of the development when evaluated in accordance with the design quality principles set out in Schedule 8, and

(b) whether the development enables the use of school facilities (including recreational facilities) to be shared with the community.

The design quality principles are set out and addressed as follows:

Principle 1 – context, built form and landscape

Schools should be designed to respond to and enhance the positive qualities of their setting, landscape and heritage, including Aboriginal cultural heritage. The design and spatial organisation of buildings and the spaces between them should be informed by site conditions such as topography, orientation and climate.

Landscape should be integrated into the design of school developments to enhance on-site amenity, contribute to the streetscape and mitigate negative impacts on neighbouring sites.

School buildings and their grounds on land that is identified in or under a local environmental plan as a scenic protection area should be designed to recognise and protect the special visual qualities and natural environment of the area, and located and designed to minimise the development's visual impact on those qualities and that natural environment.

Comment:

The proposed development does not substantially alter the existing context, built form and landscape of the school.

The proposal is considered to demonstrate consistency with this principle.

Principle 2 – sustainable, efficient and durable

Good design combines positive environmental, social and economic outcomes. Schools and school buildings should be designed to minimise the consumption of energy, water and natural resources and reduce waste and encourage recycling.

Schools should be designed to be durable, resilient and adaptable, enabling them to evolve over time to meet future requirements.

Comment:

The proposed development includes alterations to existing buildings to provide improved adaptability for future use and demand requirements.

The proposal is considered to demonstrate consistency with this principle.

Principle 3 – accessible and inclusive

School buildings and their grounds should provide good wayfinding and be welcoming, accessible and inclusive to people with differing needs and capabilities.

Note. Wayfinding refers to information systems that guide people through a physical environment and enhance their understanding and experience of the space.

Schools should actively seek opportunities for their facilities to be shared with the community and cater for activities outside of school hours.

Comment:

The layout of the existing buildings is not proposed to be altered in this application. Existing wayfinding is not expected to be unreasonably impacted by the proposal.

The proposal is considered to demonstrate consistency with this principle.

Principle 4 – health and safety

Good school development optimises health, safety and security within its boundaries and the surrounding public domain, and balances this with the need to create a welcoming and accessible environment.

Comment:

The proposal is considered to demonstrate consistency with this principle.

Principle 5 – amenity

Schools should provide pleasant and engaging spaces that are accessible for a wide range of educational, informal and community activities, while also considering the amenity of adjacent development and the local neighbourhood.

Schools located near busy roads or near rail corridors should incorporate appropriate noise mitigation measures to ensure a high level of amenity for occupants.

Schools should include appropriate, efficient, stage and age appropriate indoor and outdoor learning and play spaces, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage and service areas.

Comment:

The proposal improves upon the existing school buildings to provide more usable and accessible spaces while limiting impact upon adjacent properties and the public domain.

The proposal is considered to demonstrate consistency with this principle.

Principle 6 – whole of life, flexible and adaptive

School design should consider future needs and take a whole-of-life-cycle approach underpinned by site wide strategic and spatial planning. Good design for schools should deliver high environmental performance, ease of adaptation and maximise multi-use facilities.

Comment:

The proposed development demonstrates appropriate flexibility and adaptability of buildings and open space.

The proposal is considered to demonstrate consistency with this principle.

Principle 7 – aesthetics

School buildings and their landscape setting should be aesthetically pleasing by achieving a built form that has good proportions and a balanced composition of elements. Schools should respond to positive elements from the site and surrounding neighbourhood and have a positive impact on the quality and character of a neighbourhood.

The built form should respond to the existing or desired future context, particularly, positive elements from the site and surrounding neighbourhood, and have a positive impact on the quality and sense of identity of the neighbourhood.

Comment:

The proposed development provides for a suitable aesthetic outcome and is in keeping with the existing built form of buildings on the site.

The proposal is considered to demonstrate consistency with this principle.

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

2.8 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 coastal wetland.

Division 3 Coastal Environment Area

2.10 Development on land within the coastal environment area

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

Comment:

The proposed development is not expected to cause adverse impact to the coastal environment area.

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

Comment:

Council is satisfied that the proposed development is appropriately designed and sited to ensure adverse impact to the items referred to in subsection (1) is avoided.

Division 4 Coastal Use Area

2.11 Development on land within the coastal use area

- 1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
 - a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - i) existing, safe access to and along the foreshore, beach, headland or rock
 - ii) platform for members of the public, including persons with a disability,

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

Comment:

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

Division 5 General

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

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

Comment:

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

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

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

Comment:

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

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

Chapter 4 – Remediation of Land

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

Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone R2 : Yes Zone SP2: Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Zone R2 : Yes Zone SP2: Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	8.5m	9.98m	17.4%	No

Compliance Assessment

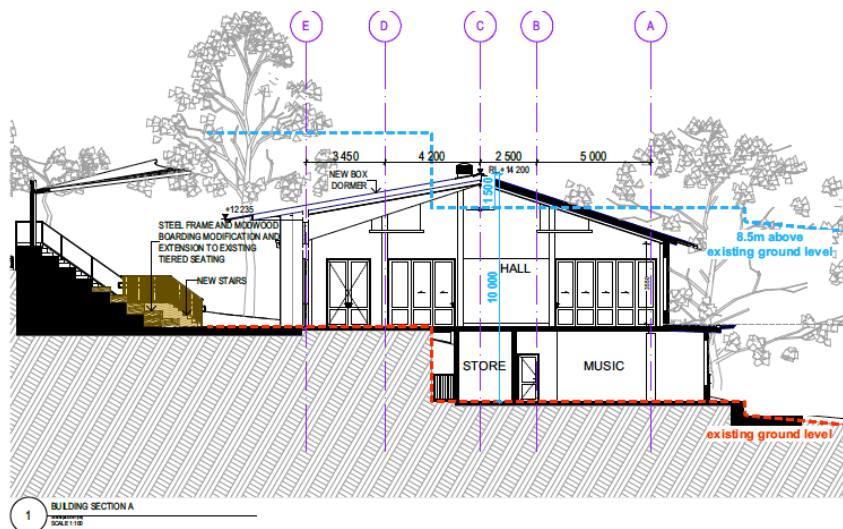
Clause	Compliance with Requirements
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.4 Floodplain risk management	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of Non-compliance

Development standard:	Height of Buildings
Requirement:	8.5m
Proposed:	9.98m
Percentage variation to requirement:	17.4%



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:

- *The proposed development will maintain the general bulk and scale of the existing surrounding development and maintains architectural consistency with the existing development which promotes the orderly & economic use of the land (cl 1.3(c)). It is noted that the additions do not exceed the height of the existing building.*
- *Similarly, the proposed additions will provide for improved amenity within a built form which is compatible with the streetscape and which also promotes the orderly and economic use of the land (cl 1.3(c)).*
- *The additions to the hall provide for a re-pitched roof form to improve amenity and promote good design (cl 1.3(g)). It is noted that the additions/alterations do not exceed the height of the existing building.*
- *The existing building exceeds the maximum height control. The new additions do not exceed the existing height and strict compliance is therefore unreasonable.*
- *The non-compliance is a result of previous approved excavation on site.*

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 building integrates and works with the sloping topography of the property while maintaining suitable amenity for adjoining properties.

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

Therefore, the applicant's written request has adequately demonstrated that there are sufficient

environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R2 Low Density Residential and SP2 Infrastructure zones. 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 proposed alterations do not increase the overall height of the existing building. The additions are relatively minor and maintain a one and two storey appearance. The resultant height is compatible with the existing surrounding development. The additions are on the northern side of the existing building and generally obscured from the public domain.

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

Comment:

The proposed alterations are relatively minor and will not be prominent in the streetscape. The topography of the site and the design of the additions to not exceed the height of the existing building will ensure that the proposal will be compatible with the height and scale of surrounding development.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The proposed development will not cause any additional overshadowing of adjacent properties.

d) to allow for the reasonable sharing of views,

Comment:

The proposed development will not cause any unreasonable view loss.

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

Comment:

The proposed alterations are generally sited within existing building footprint. No excavation is required to facilitate the proposed development.

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

Comment:

The proposed additions/alterations are located over existing hard surface areas and does not have any impact on the natural environment. The site is not an identified heritage item, nor is it located adjacent to any heritage items nor within a heritage conservation area.

Zone Objectives

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

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

Comment:

The existing educational use of the site is not altered by the proposed development.

It is considered that the development satisfies this objective.

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

Comment:

The existing educational use of the site is not altered by the proposed development.

It is considered that the development satisfies this objective.

- *To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.*

Comment:

The existing educational use of the site is not altered by the proposed development.

It is considered that the development satisfies this objective.

The underlying objectives of the **SP2 Infrastructure zone**:

- To provide for infrastructure and related uses.*

Comment:

The proposal provides for additions to the existing educational establishment.

It is considered that the development satisfies this objective.

- To prevent development that is not compatible with or that may detract from the provision of infrastructure.*

Comment:

Not applicable.

Conclusion

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential and SP2 Infrastructure zones.

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

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

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

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation	Complies
Front building line	R2 zone - 6.5m	Unaltered	N/A	Yes
	SP2 zone - Merit	8.3m	N/A	Yes
Side building line	NW - 2.5m	Unaltered	N/A	Yes
	W - 1.0m	Unaltered	N/A	Yes
Building envelope	NW - 3.5m	Within envelope	N/A	Yes
	W - 3.5m	Within envelope	N/A	Yes

Landscaped area	60%	Unaltered	N/A	Yes
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Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.4 Church Point and Bayview Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.9 Estuarine Hazard - Business, Light Industrial and Other Development	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.6 Wildlife Corridors	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	N/A	N/A
B6.6 On-Street Parking Facilities	N/A	N/A
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
C5.1 Landscaping	Yes	Yes
C5.2 Safety and Security	Yes	Yes
C5.4 View Sharing	Yes	Yes
C5.5 Accessibility	Yes	Yes
C5.7 Energy and Water Conservation	Yes	Yes
C5.8 Waste and Recycling Facilities	Yes	Yes
C5.9 Signage	N/A	N/A
C5.10 Protection of Residential Amenity	Yes	Yes
C5.11 Third Party Signage	Yes	Yes
C5.14 Car/Vehicle/Boat Wash Bays	N/A	N/A
C5.15 Undergrounding of Utility Services	N/A	N/A
C5.16 Building Facades	Yes	Yes
C5.17 Pollution control	Yes	Yes
C5.21 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
C5.22 Environmental Sustainability	Yes	Yes
D4.1 Character as viewed from a public place	Yes	Yes
D4.3 Building colours and materials	Yes	Yes
D4.5 Front building line	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D4.6 Side and rear building line	Yes	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
D4.14 Scenic Protection Category One Areas	Yes	Yes

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$17,597 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,759,740.

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 an educational establishment has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to a variation to the height of buildings development standard by more than 10%.

The critical assessment issue is the variation to the permitted building height, which is not expected to unreasonably impact upon the built form and amenity site or surrounds.

The Clause 4.6 variation 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.

No public submissions were made in relation to this application.

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 the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2023/0414 for Alterations and additions to an educational establishment (St Luke's Grammar School) on land at Lot 1 DP 304830, 1973 Pittwater Road, BAYVIEW, Lot A DP 360274, 1973 Pittwater Road, BAYVIEW, Lot 20 DP 635214, 1973 Pittwater Road, BAYVIEW, 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-0301	03	Upper Floor Level Demolition Plan	Glendenning Szoboszlay Architects	26/07/2023
A-0302	03	Roof Level Demolition Plan	Glendenning Szoboszlay Architects	26/07/2023
A-0400	03	Proposed Site Plan	Glendenning Szoboszlay Architects	26/07/2023
A-1100	02	Proposed Lower Floor Level	Glendenning Szoboszlay Architects	05/04/2023
A-1101	03	Proposed Upper Level	Glendenning Szoboszlay Architects	26/07/2023
A-1102	03	Proposed Roof Level	Glendenning Szoboszlay Architects	26/07/2023
A-1200	03	Proposed Sections	Glendenning Szoboszlay Architects	26/07/2023
A-1300	03	North & South Elevations	Glendenning Szoboszlay Architects	26/07/2023

A-1301	03	East & West Elevations	Glendenning Szoboszlay Architects	26/07/2023
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Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Design Development Report (Ref: S230601)	B	Formiga 1	02/08/2023
Geotechnical Investigation (Ref: GG10708.001A)	A	Green Geotechnics	15/03/2023
Waste Recycling Management Plan - St Lukes Bayview	-	RCCI	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	28/04/2023

(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 \$17,597.40 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 \$1,759,740.00.

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. **Building components and structural soundness**

B3 - All new and existing electrical equipment, power points, wiring and connections must be located above the Flood Planning Level of 3.55m AHD, protected from flood water or have residual current devices installed to cut electricity supply during flood events.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

8. **Storage of Goods**

Storage areas for hazardous or potentially polluting materials shall not be located below the Flood Planning Level of 3.55m AHD unless adequately protected from floodwaters in accordance with industry standards.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by Green Geotechnics, Report: GG10708.001A, Dated 15th March 2023 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

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 Principal Certifier for approval prior to the issue of the Construction Certificate.

Reason: To protect the receiving environment.

12. **Erosion and Sediment Control Plan**

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

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

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

Reason: Protection of the receiving environment.

13. **Building Code of Australia Fire Safety Requirements**

The Building Code of Australia fire safety requirements for the building as detailed and recommended in the BCA Assessment Report / Fire Audit prepared by Formiga 1, dated 2/8/2023, Rev No. B, 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.

14. 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.

15. Compliance with Standards

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

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

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

16. 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**17. 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.

18. 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.

19. 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.

20. **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) 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.

21. **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) 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.

22. **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.

23. **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.

24. **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.

25. **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

26. **Fire Safety Matters**

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and Fire and Rescue NSW.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of a part Occupation Certificate or Occupation Certificate. Each year the Owners must send to the Council and Fire and Rescue NSW, an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Parts 10, 11 & 12 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021.

27. **Registration of food Business**

The food business must be registered with the Appropriate Regulatory Authority, prior to Occupation Certificate being issued.

Reason: Food premises are required to be registered with the Appropriate Regulatory Authority.

28. **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.

29. **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.

30. **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.

31. **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.

32. **Kitchen Design, construction and fit out of food premises certification**

Prior to the issuing of any occupation certificate, certification is to be provided to the Principal Certifier by a suitably qualified person demonstrating that that the design, construction and fit out of food premises kitchen is compliant with the requirements of AS 4674 Design, construction and fit out of food premises.

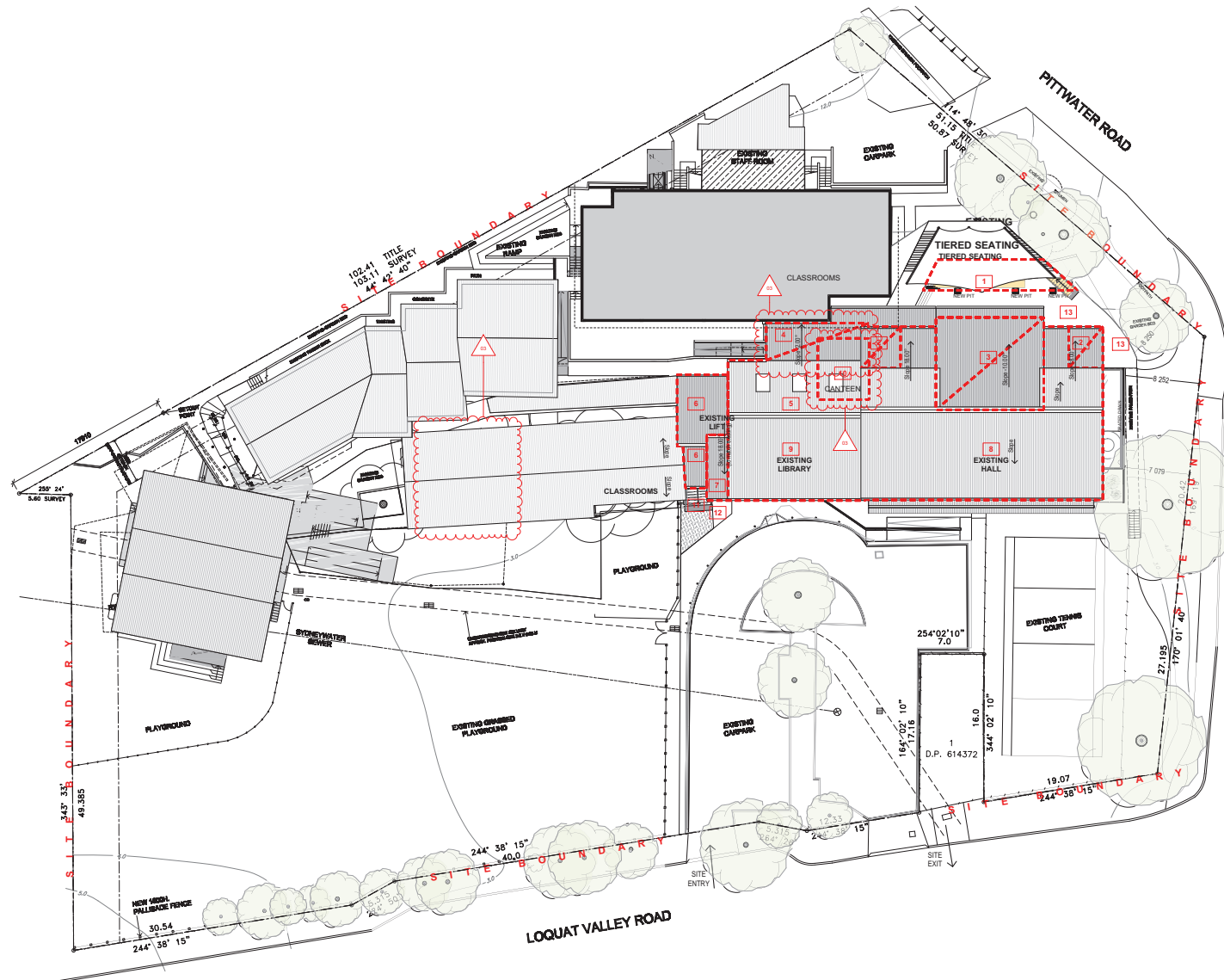
Reason: To ensure that the kitchen complies with Australian Standard design requirements.

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

33. **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.

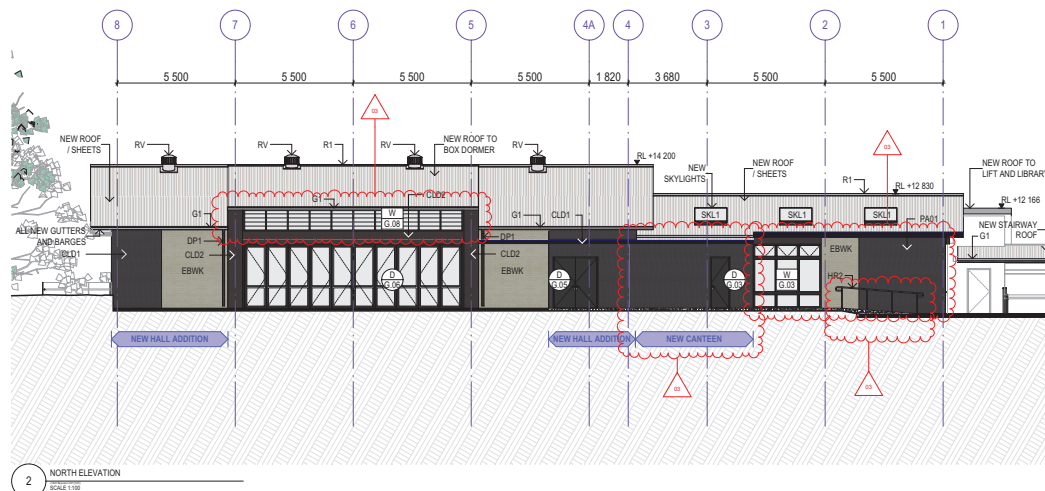
Reason: To ensure geotechnical risk is mitigated appropriately.










- NOTES**
- 1 - NEW TIERED SEATER
 - 2 - NEW HALL ADDITIONS
 - 3 - NEW BOX DORMER
 - 4 - NEW EXTERNAL ROOF CANOPY
 - 5 - NEW SKYLIGHTS IN EXISTING EXTERNAL ROOF CANOPY
 - 6 - NEW ROOF CANOPY TO NEW EXTERNAL STAIR
 - 7 - LIBRARY ADDITION
 - 8 - EXISTING HALL TO BE REFURBISHED
 - 9 - EXISTING LIBRARY TO BE REFURBISHED
 - 10 - NEW CANTEN LOCATION IN EXISTING BASEMENT
 - 11 - NEW STAIR
 - 12 - NEW LANDSCAPING
 - 13 - RELAY EXISTING PAVINGS TO NEW LEVELS

DA APPLICATION

<p>NOTE</p> <p>1. The site plan is a preliminary plan and is subject to change without notice. The client is responsible for ensuring that the site plan is accurate and up-to-date. The client is also responsible for ensuring that the site plan is in compliance with all applicable laws and regulations.</p>	<p>CHANGE</p> <p>CANTEN LOCATION REVISED, NEW ROOF AMENDED</p>	<p>GLENDENNING SZOBOSZLAY ARCHITECTS</p> <p>A: 2/555 Pacific Highway, Mt. Colah, NSW, 2073 T: (02) 9482 7231 F: (02) 9482 7231 E: admin@gsaarchitects.com.au</p>	<p>02 ISSUE FOR DA APPLICATION 03 ISSUE FOR DA APPLICATION 04 ISSUE FOR DA APPLICATION</p>	<p>28/07/2023 09/08/2023 04/04/2023</p> <p>CLIENT: ST LUKE'S GRAMMAR SCHOOL SITE: 107 PITTWATER ROAD, BAYVIEW, NSW 2104</p>	<p>DRAWN/CHECKED: MJ, BL, MG PLOT DATE: 28/07/2023 PLAN TYPE: #Site DA Custom</p>	<p>PROPOSED SITE PLAN</p> <p>PROJECT NAME: ST LUKE'S GRAMMAR SCHOOL, BAYVIEW</p>	<p>DRAWING SCALE: 1:200 @ A1 REVISION NO: 03 PROJECT NUMBER: 1403 STAGE: DA DRAWING NO: A-0400</p>
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	NEW AND MODIFIED TIERED SEATS
	NEW EXTENSION TO BUILDING
	NEW PAVING SLABS, RAMP/STAIRS
	NEW DA APPROVED DECK
	NEW DOOR
	NEW SHUTTER
	NEW WINDOW
CLD1	METAL CLADDING
CLD2	VITRA PANEL CLADDING
EBWK	EXISTING BRICKWORK
EW	EXISTING WINDOW
G1	NEW GUTTERS AND DOWNPIPES
NEWK	NEW BRICKWORK
RV	NEW ROOF VENTILATION

<p>NOTE</p> <p>THIS DRAWING, WHICH ALL DIMENSIONS AND DETAILS IN RED PENCIL TO CONSTRUCTION, SHOWN AND NOTED, IS THE PROPERTY OF THE ARCHITECT. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. IT IS NOT TO BE REPRODUCED, COPIED, REPRODUCED, OR OTHERWISE USED FOR ANY OTHER PROJECT WITHOUT THE WRITTEN PERMISSION OF THE ARCHITECT. ANY SUCH REPRODUCTION OR USE WITHOUT THE WRITTEN PERMISSION OF THE ARCHITECT IS PROHIBITED AND WILL BE CONSIDERED A VIOLATION OF THE ARCHITECT'S PROFESSIONAL ETHICS AND MAY BE SUBJECT TO LEGAL ACTION.</p>	<p>CHANGE</p> <p>STAIR RAIL RELOCATED, CANTEN LOUNGE REVISED, DOORS/WINDOWS OMITTED, NEW ROOF AMENDED</p>
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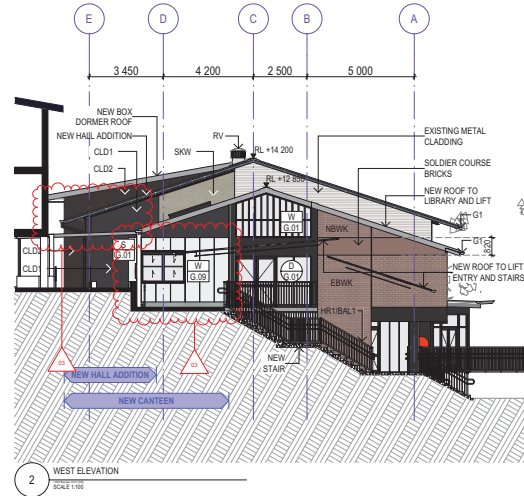
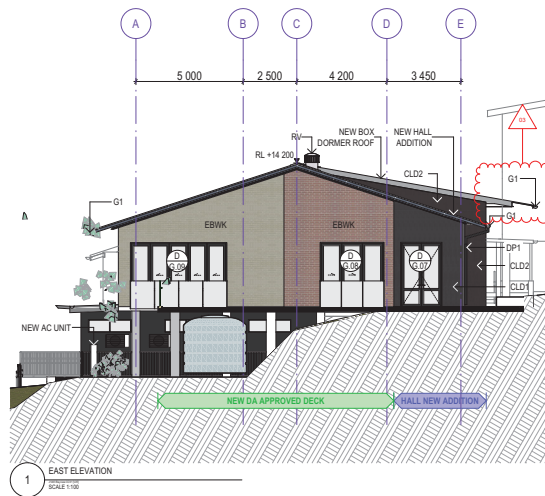
03	ISSUE FOR DAAPPLICATION
02	ISSUE FOR DAAPPLICATION
01	ISSUE FOR DAAPPLICATION
REV	ISSUE

	DRAWN/CHECKED	MZ BL, MG
	PLOT DATE	26/07/2023
	LOT	#Site ID
	PLAN TYPE	DP #Site Custom
2023	CLIENT	ST LUKE'S GRAMMAR SCHOOL
2023	SITE	1977 PITTSWATER
2023		ROAD, BAYVIEW, NSW 2104

DRAWING TITLE :
ELEVATIONS
NORTH & SOUTH ELEVATIONS

PROJECT NAME :
ST LUKE'S GRAMMAR SCHOOL

DRAWING SCALE : 1:100 @ A1		REVISION NO. 03	
PROJECT NUMBER : 1403		STAGE CC	DRAWING NO. A-1300



- LEGEND**
- NEW AND MODIFIED TIERED SEATS
 - NEW EXTENSION TO BUILDING
 - NEW PAVING SLABS, RAMP/STAIRS
 - NEW DA APPROVED DECK
 - D
X-XX NEW DOOR
 - S
X-XX NEW SHUTTER
 - W
X-XX NEW WINDOW
 - CLD1 METAL CLADDING
 - CLD2 VITRA PANEL CLADDING
 - EBWK EXISTING BRICKWORK
 - EW EXISTING WINDOW
 - G1 NEW GUTTERS AND DOWNPIPES
 - NBWK NEW BRICKWORK
 - RV NEW ROOF VENTILATION

NOTE This drawing is intended to be used in conjunction with the project description and other documents to provide a clear understanding of the project. It is not to be used for any other purpose without the written consent of the architect.		CHANGE CANTEN LOCATION REVISED, NEW ROOF AMENDED		GLENDENNING SZOBOSZLAY ARCHITECTS A: 2/655 Pacific Highway, Mt. Colah, NSW, 2079 T: (02) 9482 7231 F: (02) 9482 7231 E: glenn@glendenningszoboszlays.com.au		01 ISSUE FOR DA APPLICATION 02 ISSUE FOR DA APPLICATION 03 ISSUE FOR DA APPLICATION		26/07/2023 08/08/2023 04/04/2023 DATE		DRAWN/CHECKED: MJ, BL, MS PLOT DATE: 26/07/2023 PLAN TYPE: #04a Custom CLIENT: ST LUKE'S GRAMMAR SCHOOL SITE: 1077 PITTWATER ROAD, BAYVIEW, NSW 2104		DRAWING TITLE: ELEVATIONS EAST & WEST ELEVATIONS PROJECT NAME: ST LUKE'S GRAMMAR SCHOOL, BAYVIEW		DRAWING SCALE: 1:100 @ A1 PROJECT NUMBER: 1403 STAGE: CC		REVISION NO: 03 DRAWING NO: A-1301	
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Revised: 04/04/2023. Revised Based on Modified 01/04/2023. Revised: 01/04/2023. Revised: 01/04/2023.

1973 Pittwater Road, Bayview

**1973 PITTWATER ROAD, BAYVIEW
ST LUKES GRAMMAR SCHOOL – ALTERATIONS/ADDITIONS TO AN EDUCATIONAL
ESTABLISHMENT**

**VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MAXIMUM
BUILDING HEIGHT CONTROL AS DETAILED IN CLAUSE 4.3 OF THE PITTWATER
LOCAL ENVIRONMENTAL PLAN 2014**

For: Alterations and Additions to an Existing Educational Establishment
At: 1973 Pittwater Road, Bayview – St Lukes Grammar School Bayview
Owner: Anglican Schools Corporation
Applicant: Anglican Schools Corporation

1.0 Introduction

This written request is made pursuant to the provisions of Clause 4.6 of Pittwater Local Environmental Plan 2014. In this regard, it is requested Council support a variation with respect to compliance with the building height development standard as described in Clause 4.3 of the Pittwater Local Environmental Plan 2014 (PLEP 2014).

2.0 Background

Clause 4.3 of PLEP sets out the maximum height of a building as follows:

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

The Height of Buildings Map specifies a maximum building height of 8.5m.

The proposed modifications to the educational establishment in a maximum height as described below and noted in Figure 1 & 2 below:

1973 Pittwater Road, Bayview

- Additions to west of main building having a maximum height of 8.65m, not exceeding existing height (1.76% variation).
- Realign roof to north side of existing hall having a maximum height of 9.98m and sitting below existing ridge height (17.4% variation).

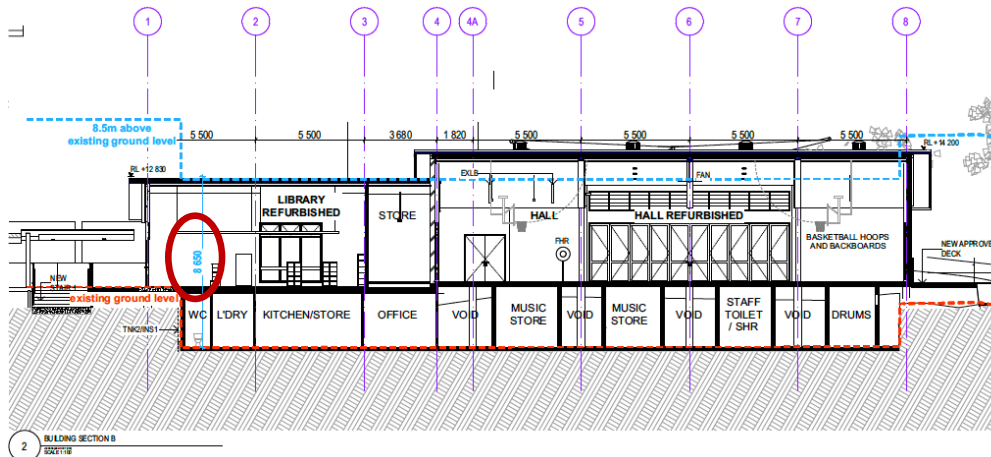


Fig 1: Extract of section depicting maximum height of 8.65m (existing height)

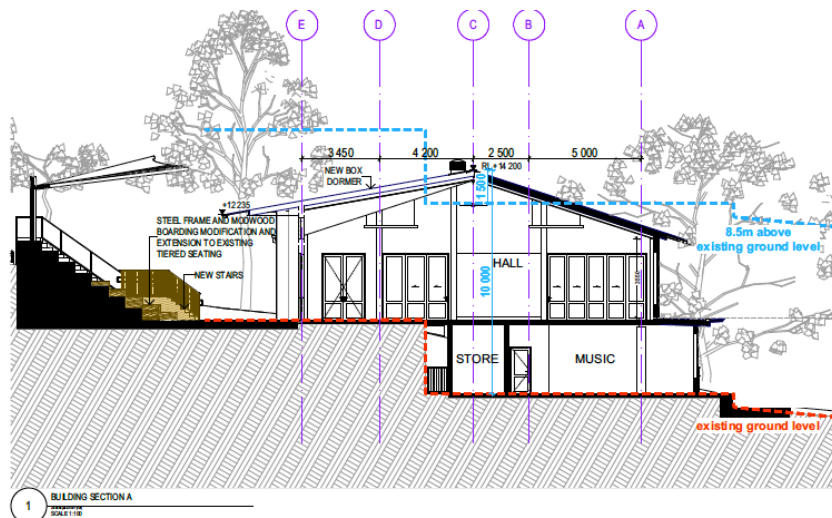


Fig 2: Extract of Section depicting maximum height of 9.98m and sitting below ridge height of existing structure

The Dictionary to PLEP operates via clause 1.4 of PLEP. The Dictionary defines “building height” as:

1973 Pittwater Road, Bayview

building height (or height of building) means—

- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,*

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

For the purposes of calculating the maximum building height, the existing excavated level within the site and in particular within the excavated sub-floor level has been determined in accordance with the principles identified in *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582 [at 73].

As noted in *Merman* [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 land, is considered to be an environmental planning ground within the meaning of clause 4.6 (3)(b) of PLEP 2014.

The proposal is considered acceptable and as discussed further within this request, there are sufficient environmental planning grounds to justify contravening the development standard.

The controls of Clause 4.3 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

Is Clause 4.3 of the LEP a development standard?

- (a) The definition of “development standard” in clause 1.4 of the EP&A Act means standards fixed in respect of an aspect of the development and includes:
 - “(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work.”*
- (b) Clause 4.3 relates to the maximum height of a building. Accordingly, Clause 4.3 is a development standard.

3.0 Purpose of Clause 4.6

The Pittwater Local Environmental Plan 2014 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the Standard Instrument should be assessed. These cases are taken into consideration in this request for variation.

In particular, the principles identified by Preston CJ in *Initial Action Pty Ltd vs Woollahra Municipal Council* [2018] NSWLEC 118 have been relied on in this request for a variation to the development standard.

4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

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

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“Initial Action”) provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in ***RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51]** where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant’s written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

“In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”.

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If objective (b) was the source of the Commissioner's test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test."

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of the LEP provides:

- (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.*

Clause 4.3 (the Maximum Building Height Control) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of the LEP.

Clause 4.6(3) of the LEP provides:

- (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.*

The proposed development does not comply with the maximum building height development standard pursuant to Clause 4.3 of PLEP which specifies a maximum building height of 8.5m in this area of Pittwater (Northern Beaches Council).

The proposed additions and alterations to the existing educational establishment will result in an amendment to the roof form on the northern side of the existing hall with a maximum height of up to 9.98m in height, resulting in a non-compliance of 1.48m or 17.4% to the control. It is noted that the new works do not exceed the height of the existing building.

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As discussed in *Merman* [at 74] the prior excavation at the rear of the site and the existing rock outcrops, which distorts the height of buildings development standard plane overlaid above the site when compared to the topography of the land, is considered to be an environmental planning ground within the meaning of clause 4.6 (3)(b) of PLEP 2014.

The proposal provides for additions to an existing building which exceeds the current height controls of the PLEP. The additions do not extend above the height of the existing buildings on site and the additions which exceed the height are not visible from the public domain. The proposed additions will improve amenity to the students and ensure an addition that complements the existing building on site.

Strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Clause 4.6(4) of PLEP provides:

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

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority.

The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]). The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest **because** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b).

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The second precondition requires the consent authority to be satisfied that that the concurrence of the Planning Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 64 of the *Environmental Planning and Assessment Regulation* 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of the LEP provides:

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

Council has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), and should consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude Clause 4.3 of the LEP from the operation of clause 4.6.

The specific objectives of Clause 4.6 are as follows:

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

The development will achieve a better outcome in this instance as the site will provide for the additions/alterations to an existing school building and ensuring appropriate amenity without exceeding the height of the existing building, which is consistent with the stated Objectives of the SP2 Educational Establishment Zone, which are noted as:

- To provide for infrastructure and related uses.
- To prevent development that is not compatible with or that may detract from the provision of infrastructure.

5.0 The Nature and Extent of the Variation

- 5.1 This request seeks a variation to the maximum building height standard contained in Clause 4.3 of PLEP.
- 5.2 Clause 4.3 of PLEP specifies a maximum building height of 8.5m in this area of Pittwater.
- 5.3 The proposal provides for additions to the existing school building. The works proposed do not extend above the height of the existing building. The non-compliance is a result of the existing non-compliance.

6.0 Relevant Caselaw

- 6.1 In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular, the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 continue to apply as follows:
 17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
 18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
 19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*

20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
 21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
 22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*
- 6.2 The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:
1. Is Clause 4.3 of PLEP a development standard?
 2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard

1973 Pittwater Road, Bayview

3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of Clause 4.3 and the objectives for development for in the R2 zone?
4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes Clause 4.3 of PLEP?

7.0. Request for Variation

7.1 Is compliance with Clause 4.3 unreasonable or unnecessary?

- (a) This request relies upon the 1st way identified by Preston CJ in *Wehbe*.
- (b) The first way in *Wehbe* is to establish that the objectives of the standard are achieved.
- (c) Each objective of the maximum 8.5m building height standard, as outlined under Clause 4.3, and reasoning why compliance is unreasonable or unnecessary, is set out below:
 - *to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*

The proposed additions do not exceed the height of the existing building. The additions are relatively minor and maintain a one and two storey appearance. The resultant height is compatible with the existing surrounding development. The additions are on the northern side of the existing building and generally obscured from the public domain.

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

The additions are relatively minor and will not be prominent in the streetscape. The topography of the site and the design of the additions to not exceed the height of the existing building will ensure that the proposal will be compatible with the height and scale of surrounding development.

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- *to minimise any overshadowing of neighbouring properties,*

The proposed additions are on the north side of the existing building and well separated from the surrounding residential buildings. The proposal will not result in any additional shadowing to surrounding residential properties.

- *to allow for the reasonable sharing of views,*

The proposed additions do not exceed the height of the existing building and will not obstruct any existing views from the adjoining properties or from the public domain.

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

The proposed additions are relatively minor and do not result in any unreasonable cut or fill.

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

The proposed additions/alterations are located over existing hard surface areas and does not have any impact on the natural environment. The site is not an identified heritage item, nor is it located adjacent to any heritage items nor within a heritage conservation area.

7.3 Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

23. *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.*

24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31].*

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

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposed development will maintain the general bulk and scale of the existing surrounding development and maintains architectural consistency with the existing development which promotes the orderly & economic use of the land (cl 1.3(c)). It is noted that the additions do not exceed the height of the existing building.
- Similarly, the proposed additions will provide for improved amenity within a built form which is compatible with the streetscape and which also promotes the orderly and economic use of the land (cl 1.3(c)).
- The additions to the hall provide for a re-pitched roof form to improve amenity and promote good design (cl 1.3(g)). It is noted that the additions/alterations do not exceed the height of the existing building.
- The existing building exceeds the maximum height control. The new additions do not exceed the existing height and strict compliance is therefore unreasonable.
- The non-compliance is a result of previous approved excavation on site.

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The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the existing building on site which exceeds the height of building development standard.

It is noted that in *Initial Action*, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. The non-compliance is a result of the non-compliance of the existing building and provide for additions that complement the existing development. The area of non-compliance does not result in any detrimental impact. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

7.4 Is the proposed development in the public interest because it is consistent with the objectives of Clause 4.3 and the objectives of the R2 Low Density Residential Zone?

- (a) Section 4.2 of this written request suggests the 1st test in Wehbe is made good by the development.
- (b) Each of the objectives of the SP2 Educational Establishment Zone and the reasons why the proposed development is consistent with each objective is set out below.

I have had regard for the principles established by Preston CJ in *Nessdee Pty Limited v Orange City Council [2017] NSWLEC 158* where it was found at paragraph 18 that the first objective of the zone established the range of principal values to be considered in the zone.

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Preston CJ also found that “*The second objective is declaratory: the limited range of development that is permitted without or with consent in the Land Use Table is taken to be development that does not have an adverse effect on the values, including the aesthetic values, of the area. That is to say, the limited range of development specified is not inherently incompatible with the objectives of the zone*”.

In response to *Nessdee*, I have provided the following review of the zone objectives:

It is considered that notwithstanding the variation of to the building height, the resultant building as now proposed will be consistent with the individual Objectives of the SP2 Educational Establishment Zone for the following reasons:

- ***To provide for infrastructure and related uses.***

The proposal provides for additions to the existing educational establishment.

- ***To prevent development that is not compatible with or that may detract from the provision of infrastructure.***

This objective is not relative to the proposal.

Accordingly, it is considered that the site may be further developed with a variation to the prescribed maximum building height control, whilst maintaining consistency with the zone objectives.

7.5 Has council obtained the concurrence of the Director-General?

The Council can assume the concurrence of the Director-General with regards to this clause 4.6 variation.

7.6 Has the Council considered the matters in clause 4.6(5) of PLEP?

- (a) The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed educational establishment for the particular site and this design is not readily transferrable to any other site in the immediate locality, wider region of the State and the scale or nature of the proposed development does not trigger requirements for a higher level of assessment.

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- (b) As the proposed development is in the public interest because it complies with the objectives of the development standard and the objectives of the zone there is no significant public benefit in maintaining the development standard.
- (c) There are no other matters required to be taken into account by the secretary before granting concurrence.

8.0 Conclusion

This development proposed a departure from the maximum building height development standard, with the proposed modifications provide for a maximum building height of 9.98m when measured above the prior excavated levels of the site.

This variation occurs as a result of the sloping topography of the site, the desire to improve amenity through provision an improved entry, the prior excavation of the site, resulting in the distortion of how the building height plane relates to a site and the height of the building (of which the additions will not exceed).

The extent of the variation to the building height control does not result in any significant impact for the views and outlook for the neighbouring properties.

This written request to vary to the maximum building height standard specified in Clause 4.3 of the Pittwater LEP 2014 adequately demonstrates that that the objectives of the standard will be met.

The bulk and scale of the proposed development is appropriate for the site and locality.

Strict compliance with the maximum building height control would be unreasonable and unnecessary in the circumstances of this case.

Natalie Nolan
Town Planner