

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 25 OCTOBER 2023

Ashleigh Sherry
Manager Business System and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 25 October 2023
via teleconference
Commencing at 10:00 AM**

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ACKNOWLEDGEMENT OF COUNTRY

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

1.0 APOLOGIES & DECLARATIONS OF INTEREST

Nil.

2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 27 SEPTEMBER 2023

RECOMMENDATION

That the Panel note that the minutes of the Development Determination Panel held 27 September 2023 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	DA2023/1007 - 5 LOOKOUT AVENUE DEE WHY - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Adam Richardson
TRIM FILE REF	2023/669922
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations 3 ↓ Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of WLEP 2011 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2023/1007 for alterations and additions to a dwelling house on land at Lot 5 DP 12667, 5 Lookout Avenue DEE WHY, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/1007
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Responsible Officer:	Olivia Ramage
Land to be developed (Address):	Lot 5 DP 12667, 5 Lookout Avenue DEE WHY NSW 2099
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Peter Charles Huddle Kimberly Jane Huddle
Applicant:	Shona Mcelroy

Application Lodged:	01/08/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	08/08/2023 to 22/08/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 15.88%
Recommendation:	Approval

Estimated Cost of Works:	\$ 247,500.00
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EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) due to a variation to the height of buildings development standard by more than 10%.

Critical assessment issues included building height.

The 4.6 request for the non-compliance with height standard arises from the installation of new balustrades to the existing roof area to create a second floor terrace. The existing dwelling breaches

the height standard with the proposed works not increasing the extent of overall height or the building..

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

PROPOSED DEVELOPMENT IN DETAIL

The proposed development consists of alterations and additions to the existing dwelling. Specifically, the works include the installation of balustrades on the existing roof to provide a second floor terrace. Internal alterations are proposed to the second floor and the ground floor along with replacing windows with new windows and glazed doors.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting

SITE DESCRIPTION

Property Description:	Lot 5 DP 12667 , 5 Lookout Avenue DEE WHY NSW 2099
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern side of Lookout Avenue. The site is regular in shape with a frontage of 17.375m along Lookout Avenue and a depth of 35.345m. The site

	has a surveyed area of 613.5m². The site is located within the R2 Low Density Residential Zone under the WLEP 2011. The site is currently occupied by a one, two, three and four storey dwelling house and pool in the rear yard. The site slopes steeply down from the southern frontage towards the northern rear of the site. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by residential dwellings of varying sizes and styles.
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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:

- **DA2000/3991** - Development application for Proposed garage. Approved 5 September 2000.
- **DA2002/1487** - Development application for Two storey dwelling for Land and Environment Court Hearing.
- **DA2003/0137** - Development application for Deck and relocate windows. Approved by Land and Environment Court 14 November 2003.
- **DA2017/0421** - Development application for Alterations and additions to a dwelling house. Approved 17 July 2017.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
and economic impacts in the locality	The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 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
NECC (Bushland and Biodiversity)	<i>Supported, without conditions</i> The proposal seeks approval for alterations and additions to a dwelling house. The comments in this referral relate to the following applicable controls: • SEPP (Resilience and Hazards) 2021 - Coastal use area • Warringah DCP Clause E2 Prescribe Vegetation • Warringah DCP Clause E4 Wildlife Corridors

Internal Referral Body	Comments
	Warringah DCP Clause E6 Retaining unique environmental features The proposed alterations and additions would take place in previously disturbed areas of the site. No native vegetation or fauna habitat would be impacted, the development is designed, sited and will be managed to avoid any significant adverse environmental impact.
NECC (Coast and Catchments)	Supported, without conditions This application was assessed in consideration of: - Supplied plans and reports; - Coastal Management Act 2016; - State Environmental Planning Policy (Resilience and Hazards) 2021 and - Relevant LEP and DCP clauses 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 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. State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the and 'Coastal Use Area' and 'Coastal Environment' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP). Hence, Clauses 2.10, 2.11 and 2.12 of apply for this DA. On internal assessment the DA satisfies requirements under clauses 2.0, 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 Warringah LEP 2011 and Warringah DCP 2011 No coastal related issues identified. As such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Warringah LEP 2011 and Warringah DCP 2011. The proposal is therefore supported.

Internal Referral Body	Comments		
Parks, reserves, beaches, foreshore	Supported, with conditions The property adjoins a public reserve to the north. No physical encroachments over the site boundaries are permitted, and structures and built elements are not permitted beyond the site boundaries. All development works must ensure that surface sediment runoff and/or erosion is controlled, managed and contained within the site boundaries.		
Strategic and Place Planning (Heritage Officer)	Supported, without conditions		
	HERITAGE COMMENTS		
	Discussion of reason for referral		
	This application has been referred as it adjoins a heritage conservation area, being C10 - Coastal Cliffs, Between Dee Why Beach, Curl Curl Lagoon and North Curl Curl Headland , listed in Schedule 5 of Warringah LEP 2011.		
	Details of heritage items affected		
	Details of this conservation area in the vicinity, as contained within the Heritage Inventory, are: C10 - Coastal Cliffs, Between Dee Why Beach, Curl Curl Lagoon and North Curl Curl Headland		
	<u>Statement of Significance</u> The Dee Why-North Curl Curl Coastal Cliffs headland has existence value as a major coastline promontory, protecting adjacent beaches and estuarine lagoons and providing dramatic landforms and viewing points. Its associated rock platforms are host to two ocean swimming baths, and these combined with the cliffs' high aesthetic qualities have a high level of community esteem.		
	Other relevant heritage listings		
	SEPP (Biodiversity and Conservation) 2021	No	Comment if applicable
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	
	Consideration of Application		
This application is for alterations and additions to the existing dwelling house on-site, including replacement of some windows, creation of a new terrace at level 2 with glass balustrades to match existing. The footprint of the existing house is not changed, nor is			

Internal Referral Body	Comments
	there any proposed changes to the pool area, which immediately adjoins the conservation area at the rear of the site. While this site adjoins the heritage conservation area, there is approximately 30 metres of vegetation between the existing house and the actual cliff face. While the addition of a new balustrade to the second floor will change the appearance of the house when viewed from the conservation area, it is not a significant visual change and will not have an adverse impact upon the heritage significance of the conservation area. The bulk and scale of development on this site will not be greatly changed by this proposal. Therefore, no objections are raised on heritage grounds and no conditions required. <u>Consider against the provisions of CL5.10 of WLEP 2011:</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? N/A Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? N/A

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A495875 dated 4 May 2023).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 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 consists of works within the footprint of the existing dwelling. As such, the proposal is not likely to cause adverse impacts on the above matters.

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

Comment:

The proposed works are designed and sited to avoid adverse impacts on the above matters.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

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

Comment:

The proposed development is designed and sited to avoid adverse impacts on the above matters.

Division 5 General

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

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

Comment:

The proposed development is not likely to cause increased risk of coastal hazards.

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

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

Comment:

The proposal has been reviewed against all relevant legislation and policies.

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

Chapter 4 – Remediation of Land

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.85m	15.88%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
5.3 Development near zone boundaries	Yes
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:	9.85m
Percentage variation to requirement:	15.88%

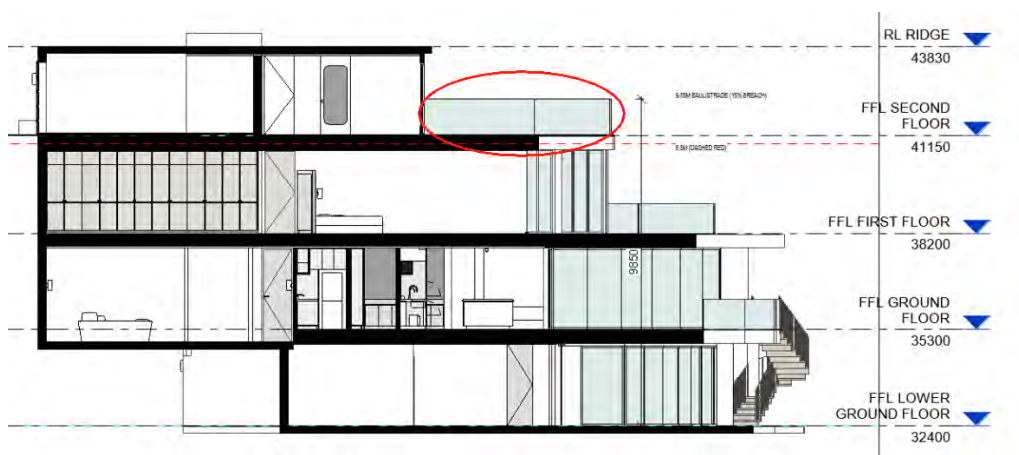


Figure 1 - Section plan showing extent of height breach

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:

- *The existing dwelling is partially in breach of the 8.5m height requirement and was approved by Council in 2017. The justification for the variation for this application has not materially altered from the justification provided for the existing dwelling.*
- *The proposal seeks to improve safety by providing a balustrade on the existing elevated area.*
- *There is a precedence of similar elevated structures in the surrounding vicinity which also breach the height limit.*
- *The proposal does not alter the ridge height and maintains views and amenity.*
- *The existing dwelling sits below the street level and the terrace is well screened ensuring privacy is maintained.*

The applicant's written request and justification is generally agreed with. It is acknowledged that the existing dwelling is in breach of the height standard and has been previously approved. The further

height breach occurs as a result of the installation of balustrades on the existing terrace area for safety. There is a presence of similar elevated structures including terraces and balconies in the surrounding vicinity which ensures the development is compatible with the height and scale of surrounding development. The assessment finds that the proposal maintains a reasonable level of privacy, amenity and view sharing.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

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

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

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

Comment:

The proposal does not alter the ridge height of the existing dwelling, the breach is only due to the installation of balustrades. The new balustrades do not render the dwelling incompatible with the height and scale of surrounding and nearby development.

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

Comment:

The proposal involves the installation of balustrades that are of minimal visual impact and do not impact on views or solar access. The terrace is setback 3.6m from the eastern side boundary and 3.5m from the western side boundary ensuring sufficient spatial separation is provided to maintain privacy.

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

Comment:

The proposed development does not adversely impact on the scenic quality of Warringah's coastal and bush environments.

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

Comment:

The subject site directly adjoins the public reserve headland walkway. The proposal is sympathetic to the scenic values afforded by the public open space area and is of minimal visual impact.

Zone objectives

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

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

Comment:

The proposal consists of alterations and additions to the existing dwelling which continues to provide for the housing needs of the community within a low density residential environment.

It is considered that the development satisfies this objective.

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

Comment:

The proposal does not impact on the ability of other land uses to provide facilities or services to meet the day to day needs of residents.

It is considered that the development satisfies this objective.

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

Comment:

The proposal does not alter the existing landscape setting and maintains all existing

landscaped areas across the site. As such, the proposal ensures that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.

It is considered that the development satisfies this objective.

Conclusion:

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

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

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

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

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	Existing: 7.9m	9%	No Change
B3 Side Boundary Envelope	East - 5m	Outside Envelope (Encroachment of 1.1m for a length of 6.0m)	22%	No
	West - 5m	Outside Envelope (Encroachment of 1.1m for a length of 9.0m)	22%	No
B5 Side Boundary Setbacks	East - 0.9m	3.6m	N/A	Yes
	West - 0.9m	3.5m	N/A	Yes
B7 Front Boundary Setbacks	6.5m	Garage: 2.2m Terrace: 9.2m	66.2% N/A	No Change Yes
B9 Rear Boundary Setbacks	6m	15.9m	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland	40%	26% (159.3m ²)	35%	No Change

Setting				
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Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	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
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Merit Consideration

This control stipulates a maximum wall height of 7.2m. The existing dwelling has a maximum wall height of 7.9m which was previously approved under DA2017/0421. The proposal does not alter the wall height of the existing dwelling and is therefore considered acceptable.

B3 Side Boundary Envelope

Description of non-compliance

This control requires buildings to be sited within an envelope determined by projecting planes at 45 degrees from a height of 5.0m above ground level at the side boundaries. The proposed development encroaches the eastern side boundary envelope by 1.1m for a length of 6.0m. The proposed development encroaches the western side boundary envelope by 1.1m for a length of 9.0m.

It is noted that the the encroachment occurs as a result of the new balustrades to the second floor terrace.



Figure 2 - East elevation showing envelope breach in red

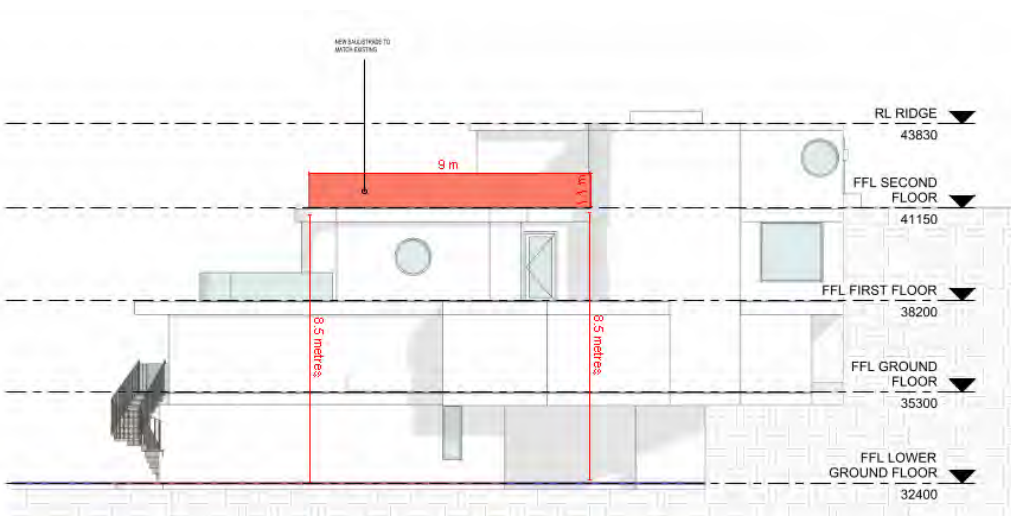


Figure 3 - West elevation showing envelope breach in red

Merit consideration

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

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

Comment:

The proposal involves the installation of new balustrades to the existing roof area to provide a second floor terrace. The balustrades incorporate clear glazing which provides minimal visual impact and ensures that the development does not become visually dominant by virtue of its height and bulk.

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

Comment:

The proposed terrace is setback 3.6m from the eastern side boundary and 3.5m from the western side boundary providing ample spatial separation between buildings. This ensures adequate light, solar access and privacy is maintained.

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

Comment:

The site slopes steeply down to the northern rear whereby the existing dwelling steps down with the slope. The development has appropriately responded to the topography of the site.

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

D1 Landscaped Open Space and Bushland Setting

Merit Consideration

This control requires at least 40% of the site area to be Landscaped Open Space (LOS). The proposal provides 26% (159.3m²) of LOS and does not comply with the control. It is noted that this is an existing non-compliance with the control and the proposal does not alter the existing quantum of landscaped area across the site. As such, the non-compliance is considered acceptable.

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 \$2,475 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$247,500.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

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

a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and

b) There are sufficient environmental planning grounds to justify the contravention.

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

PLANNING CONCLUSION

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

The critical assessment issues included building height.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.

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

RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2023/1007 for Alterations and additions to a dwelling house on land at Lot 5 DP 12667, 5 Lookout Avenue, DEE WHY, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA - 101	-	Site Plan	SMAC Studio	17 March 2023
DA - 110	-	Floor Plans	SMAC Studio	17 March 2023
DA - 210	-	Proposed Elevations	SMAC Studio	17 March 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate No. A495875	-	SMAC STUDIO PTY LTD	4 May 2023
Preliminary Geotechnical Assessment	1	AscentGeo Geotechnical Consulting	12 May 2023
Waste Management Plan	-	-	-

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	Undated

(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 \$2,475.00 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 \$247,500.00.

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

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

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

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

6. Security Bond

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

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

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

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is

located on Council's website at www.northernbeaches.nsw.gov.au).

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

7. Stormwater Drainage Disposal

The stormwater drainage systems for the development are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.

All stormwater drainage systems must comply with the requirements of Council's Water Management for Development Policy. Any recommendations identified within a Geotechnical Report relevant to the development are to be incorporated into the design of the stormwater drainage system. Details demonstrating compliance from a qualified and practising Civil Engineer and where relevant a Geotechnical Engineer must be submitted to and approved by the Certifier prior to the issue of a Construction Certificate.

When the proposed discharge point for the development in this consent cannot strictly comply with the Water Management for Development Policy, the Applicant must apply to verify the proposed discharge point by gaining Council approval via a Stormwater Drainage Application. Council approval must be provided to the Certifier prior to the issue of a Construction Certificate when a Stormwater Drainage Application is required. The Stormwater Drainage Application form can be found on Council's website.

Compliance with this condition must not result in variations to the approved development or additional tree removal.

Reason: To ensure satisfactory management of stormwater.

8. Amendments to the approved plans

The following amendments are to be made to the approved plans:

- The solar panels are to be deleted from the plans and do not form part of this consent.

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

Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development.

9. 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.

10. 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

11. **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.

12. **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.

13. **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.

14. **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.

15. **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

16. **Stormwater Drainage Disposal Certification**

Certification from an appropriately qualified and practising Civil Engineer demonstrating the stormwater drainage systems have been designed and installed in accordance with the

requirements of Council's Water Management for Development Policy and where relevant a Geotechnical Engineer shall be provided to the Principal Certifier prior to the issue of an Occupation Certificate, and;

If any on site stormwater detention system is installed the Applicant shall lodge the Legal Documents Authorisation Application with Council.

The application is to include the completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification. A guide to the process and associated Legal Document Authorisation Application form can be found on Council's website. The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater detention system within this development consent.

The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the authority to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user for the on-site stormwater detention system is to be submitted.

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

Reason: To ensure satisfactory management of stormwater.

17. Geotechnical Certification Prior to Occupation Certificate

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

18. Waste Management Confirmation

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

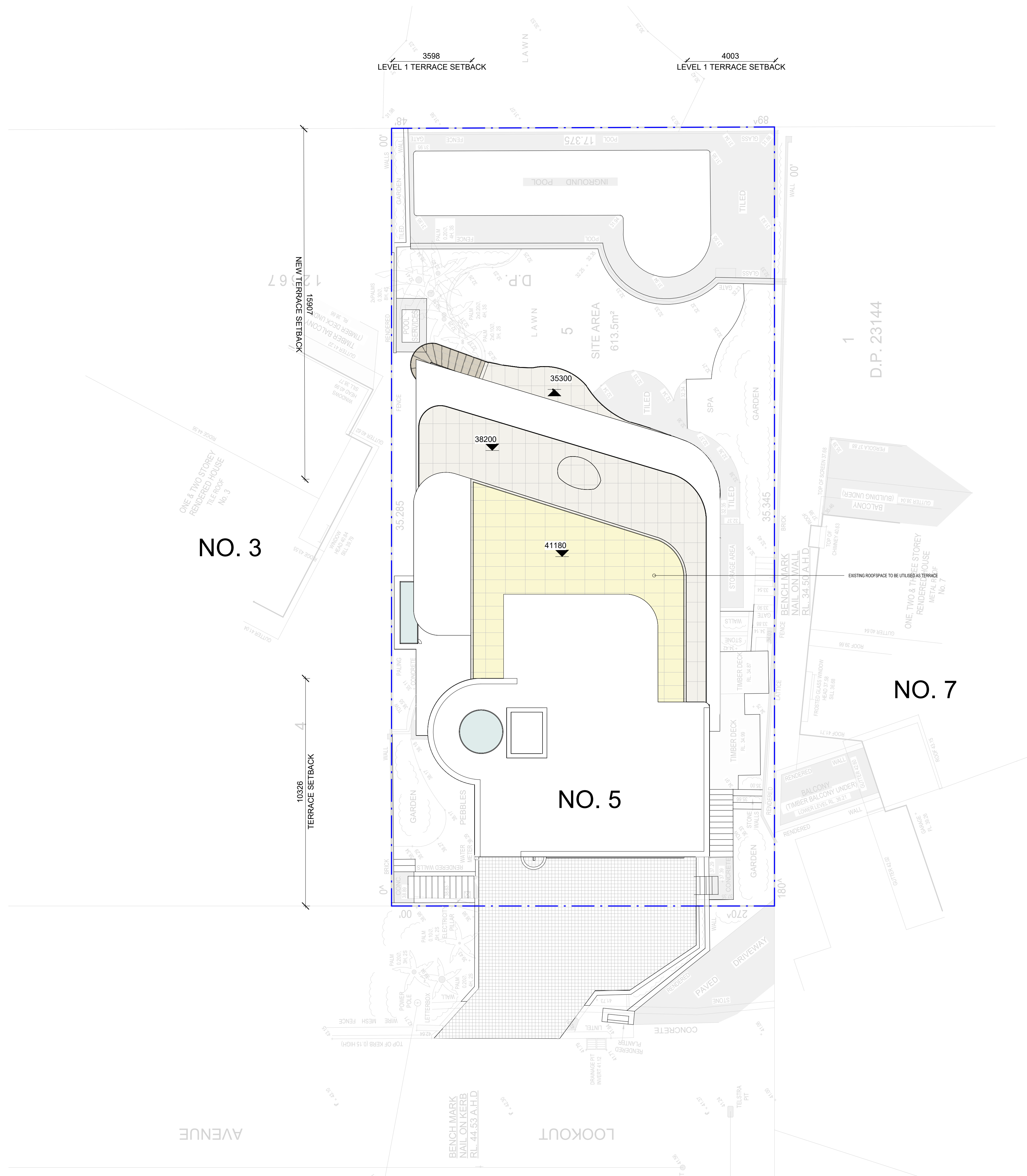
Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

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

19. 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.

[illegible]

AREAS

SITE AREA = 613.5M2

LANDSCAPE AREA

126M2 = 20.5%
Existing landscape unchanged with
proposed addition

CLIENT: Kimberly & Peter Huddle

5 Lookout Avenue, Dee Why, NSW

DESIGNER:
SMAC
STUDIO

address: 18/166 Oxford Street, Woollahra, 2025 // ph: 0420 981 300

SITE PLAN

NOTES:

1. Use only figured dimensions, do not scale drawings.
2. All discrepancies and omissions to be referred to ID Studios prior to construction.
3. Check all dimensions, Building Code of Australia, relevant codes and council approvals.
4. This drawing is not for construction.

Copyright remains the property of ID Studios. Reproduction of the whole or part of this document constitutes an infringement of copyright.

NORTH:

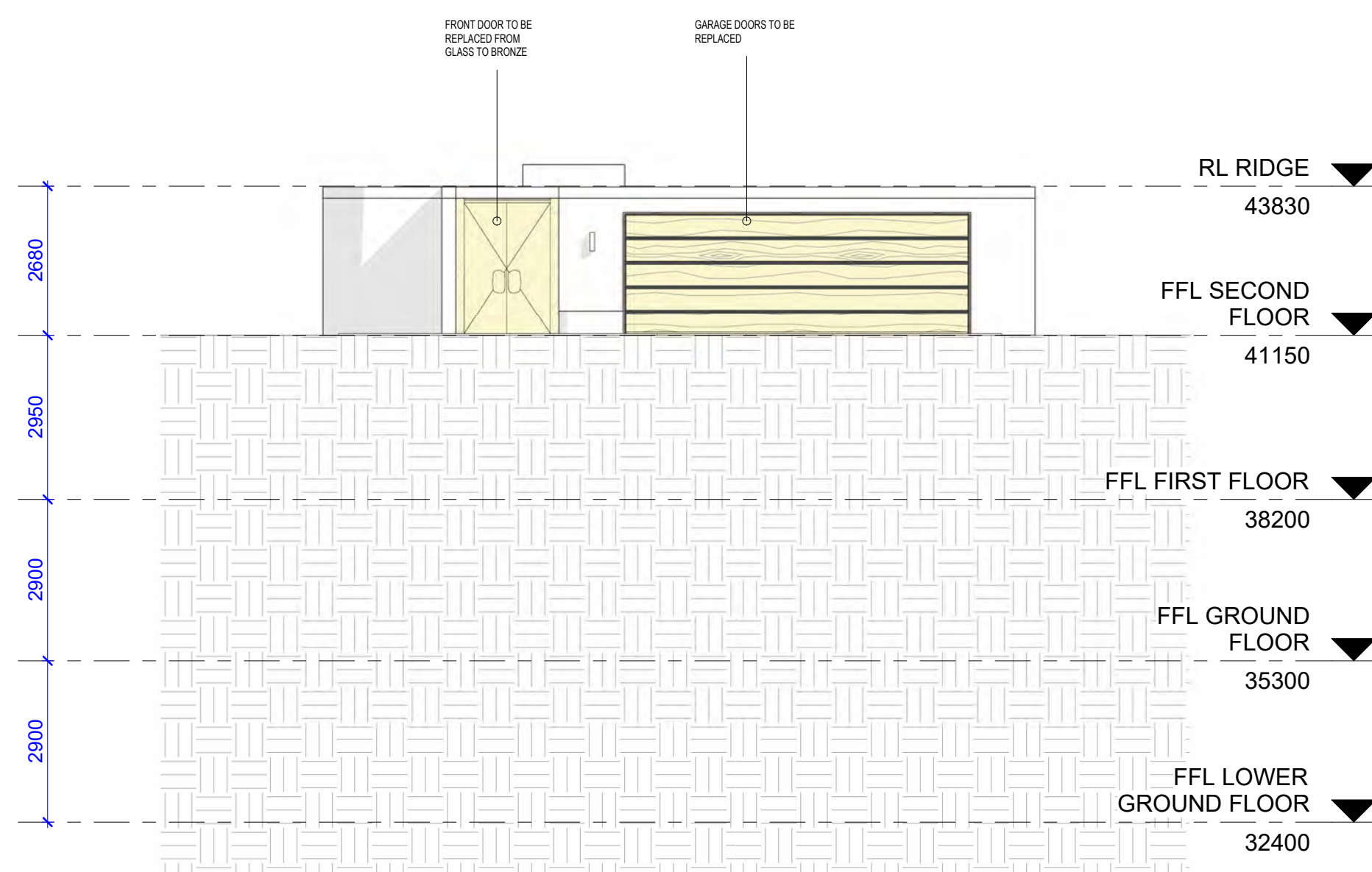
NOMINATED ARCHITECT ANDREW OLIVER O'CONNELL:
9018

DATE: 7.03.23

DRAWN BY: Author	CHECKED BY: Checker	PROJECT NO: 19-01
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DRAWING NO:	ISSUE:
DA 101	

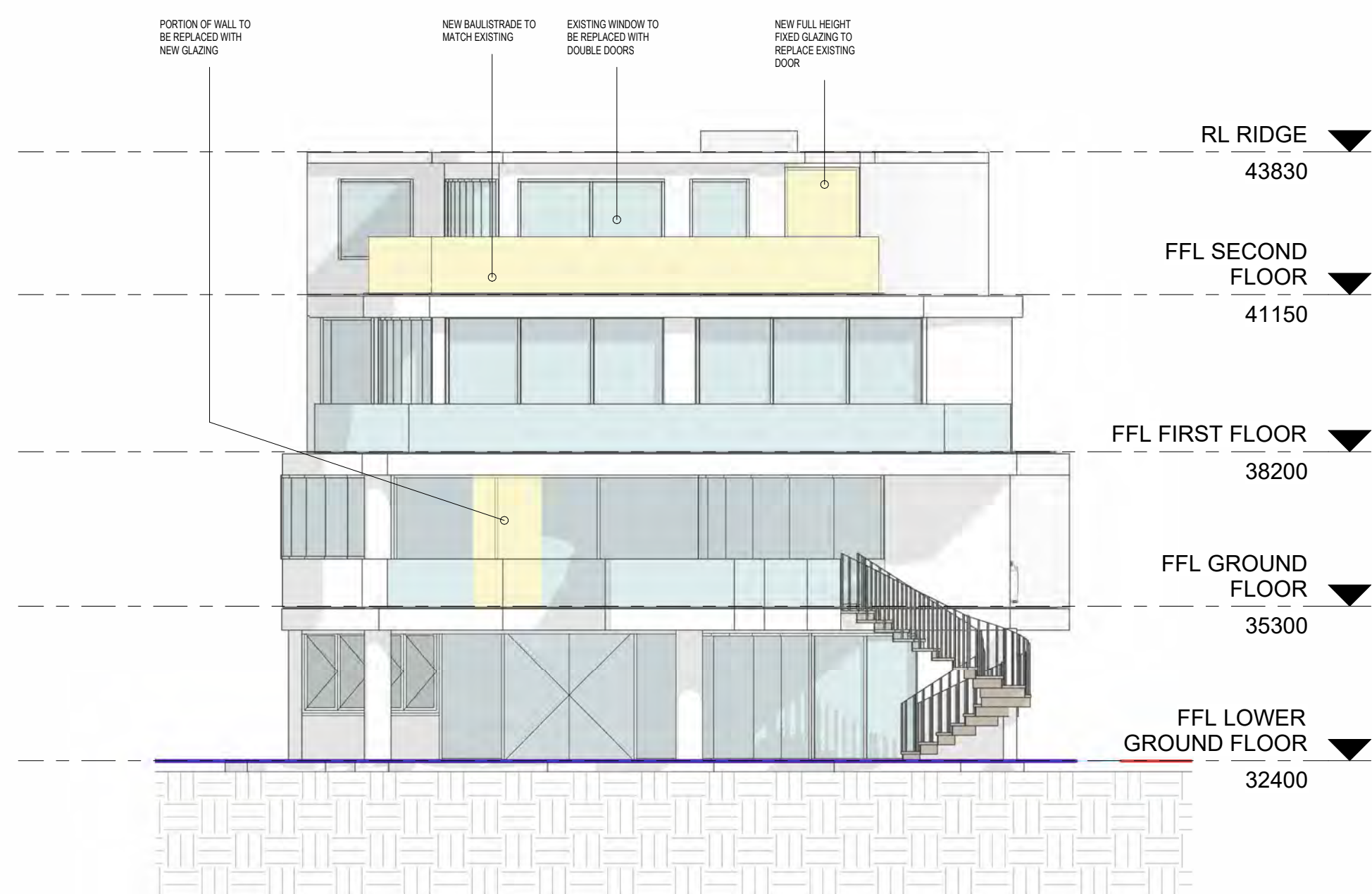
2/05/2023 11:22:45 AM



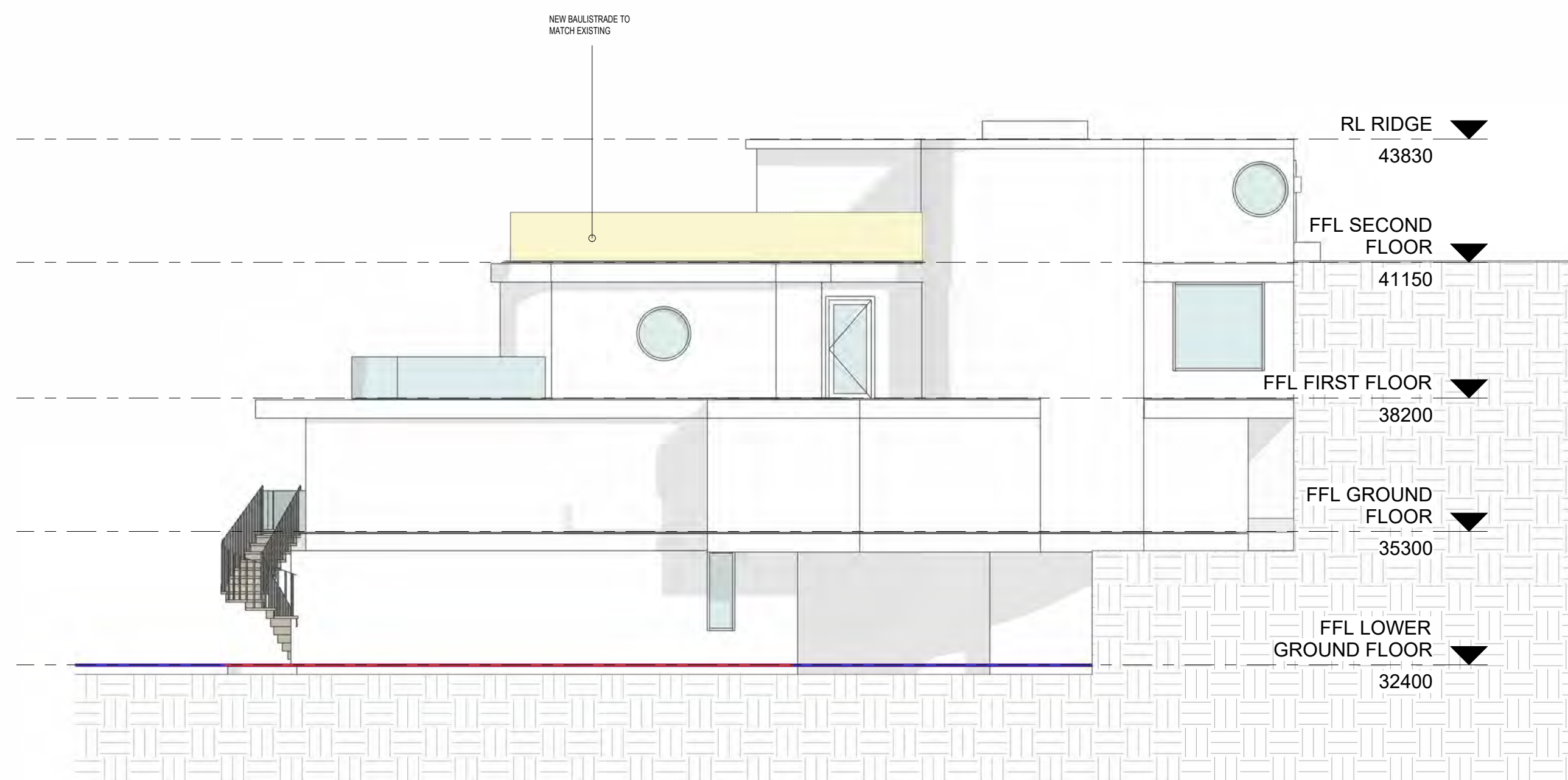
1 Front Elevation
1 : 100



2 Right Elevation
1 : 100



4 Rear Elevation
1 : 100



3 Left Elevation
1 : 100

[illegible]

CLIENT:

Kimberly & Peter Huddle

PROJECT:

5 Lookout Avenue, Dee Why, NSW

DESIGNER:

SMAC
STUDIO

address: 18/166 Oxford Street, Woolahra, 2025 // ph: 0420 981 3

PROPOSED ELEVATIONS

NOTES:

1. Use only figured dimensions, do not scale drawings.
2. All discrepancies and omissions to be referred to ID Studios prior to construction.
3. Check all dimensions, Building Code of Australia, relevant codes and council approvals.
4. This drawing is not for construction.

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NORTH

NOMINATED ARCHITECT ANDREW OLIVER O'CONNELL:

9018

SCALE:
1 : 100

DRAWN BY: SM	CHECKED BY: SM	PROJECT NO: 19-01
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DATE:
17.03.23

DRAWING NO:	ISSU
DA 010	

2/05/2023 11:22:58 AM

September 11, 2023

Ms Olivia Ramage

Planning and Development Services

c/- olivia.ramage@northernbeaches.nsw.gov.au

Dear Olivia

RE: Proposed Development Application DA2023/1007 – 5 Lookout Avenue Dee Why NSW 2099.

Clause 4.6 Application addressing breach of Building Height

I refer to your recent correspondence requesting further justification for breach of building height associated with the development application presently under assessment by Council.

The existing built form of the residence today is partially in excess of the 8.5m building height guideline as stated in the Warringah LEP 2011 Part 4 Principal Development Standards - 4.3 Height of Buildings. The existing built form was approved via a Council Development application process in 2017 and the justification for this application approval has not materially altered to the design justification that Council approved in 2017.

Furthermore what we as applicants are seeking is to further mitigate what we see as a safety concern at our premise by constructing an enclosure on an elevated built form that even today is accessed by residents and guests of the house. We see first and foremost an obligation on ourselves, as property owners, and council to prioritise safety ahead of any other consideration including development guidelines.

On an initial physical, and where applicable, authority documentation review of similar properties in the immediate vicinity of our property we note that both building heights and upper level balustrade constructions have been completed that are either the same or materially higher than the proposed conditions sought from our Development application. These precedent conditions on recent and contemporary development approvals are listed in the attached appendix to support this request for height variation dispensation.

The objectives of the development standard are

- a. To ensure that buildings are compatible with the height and scale of surrounding and nearby developments
- b. To minimise visual impact, disruption of views, loss of privacy and loss of solar access,
- c. To minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments
- d. To manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities

Our Proposal

The site has a natural slope across and falls steeply from the front road to the rear of the property approximately 9.5m over the 35 m boundary. The existing garage floor level sits 0.8m below street level and the residence steps down the site to the lower ground level

The existing built form does not change. As part of this application, we are simply placing a balustrade on a constructed terrace. The property falls down the hill and faces the water. The views

from the site and adjacent properties are towards the north, and the ridge height does not effect views for any neighbours. This is reflected in the no submissions received from Council, unlike the precedent properties that I have referred to in the appendix. Due to the topography of the street the neighbours opposite the premise are on a much higher level and overlook the entire residence and the addition of balustrading to this level 2 balcony has absolutely zero impact on their views or amenity.

Despite the size of the house, it is well screened from scenic reserves and the coastal walk between Dee Why and North Curl Curl beaches. The applicant presently maintains the reserve immediately to the east of the property. This also protects privacy for both the property and those enjoying the coastal reserve walk.

Our Architect has provided a section of the proposed development in the appendix below. Again we state that we are simply adding a balustrade to what is already a built form. What is not clear from the section is that the top of the house at RL43830 is 800 below the street level the entire premises extremely well screened from all but the immediate two neighbours.

We seek Council support in relation to a variation for the building height in the context of the overall design outcome of this contemporary home, the zero impact on neighbouring properties solar access and loss of views and next to zero impact on privacy form the built form today.

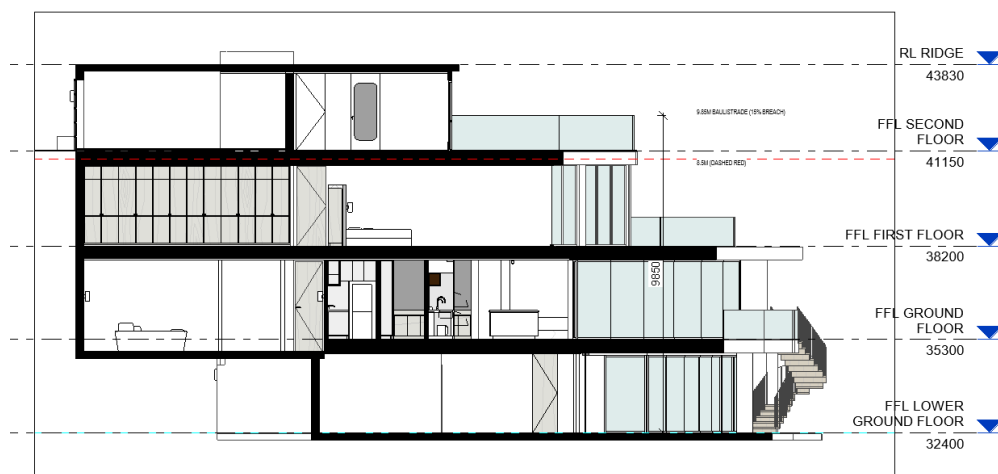
Please feel free to contact the undersigned if your request even further detailed analysis to justify this request for variation consent.

Kind Regards

Peter and Kim Huddle

Owners of 5 Lookout Avenue Dee Why NSW 2099

Re: Appendix A – Section showing Balustrade on existing built form



Section view showing existing breach of 8.5m height line, and additional request for 1.1m glass balustrade for safety, coming to an overall height of 9.85m above LG slab, 15% above the 8.5m height line.

Appendix B – Precedent Properties



22 Ian Lane Nth Curl Curl

4 level house construction. Balustrade on the fourth level well in excess of 8.5M above natural ground level

Da approved 2017

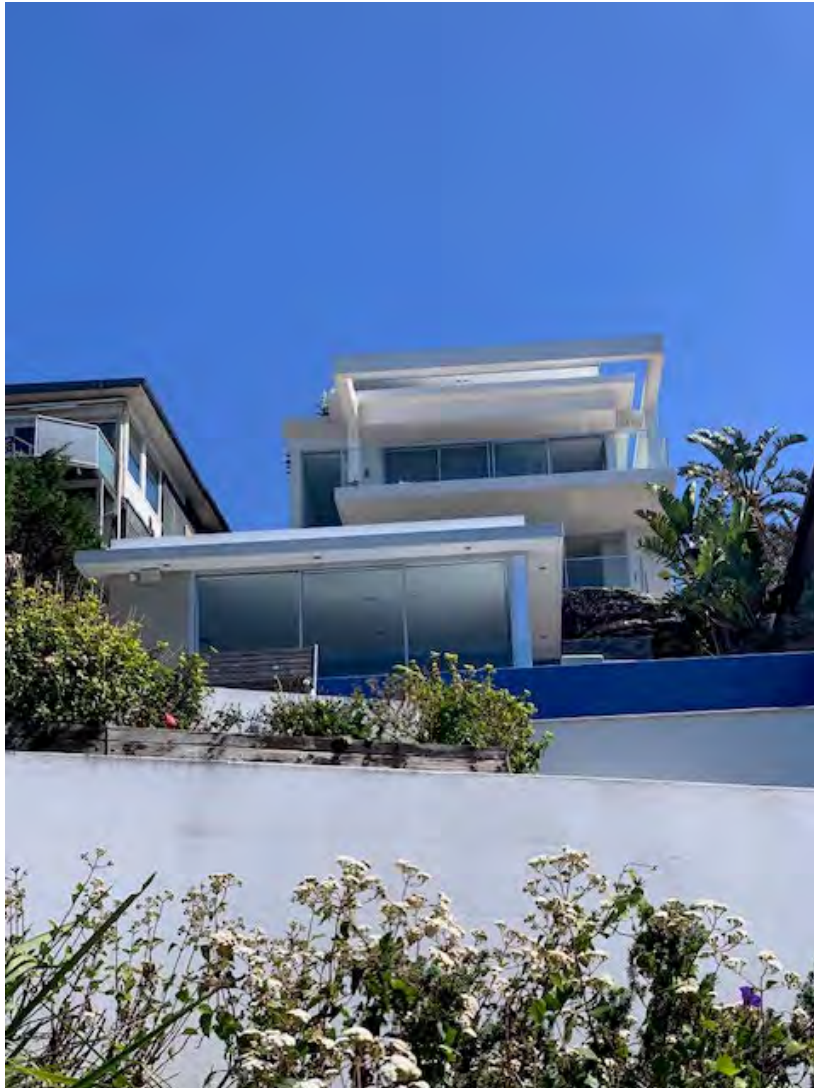


24 Ian Lane Nth Curl Curl

2 houses constructed – Granny flat at lower levels. On top of the granny flat is a pool and pool terrace area.

Separate to this is a multi-story house.

Top floor height materially in excess of 8.5m (estimated 15m)



Ian Lane North Curl Curl – No DA information but

L1 – pool and cabana

L2-5 - house

Top level balustrade can not be seen from photo and sits recessed behind structural cantilevered beams

Balustrade height well in excess of 10m – likely to be well in excess of 15m from start of built form.



32 Ian Lane North Curl Curl

Relatively new Da recently approved to amend existing built form

Total house height is greater than 14.7m. This does not include construction of lower level cabana (add a further 5m)

Balustrade height on L4 >12m above ground level



2 Ian Lane – immediately adjacent to The Windy Drop down estate

No Council information

Clearly 4 levels of house sitting above a lower level pool and terrace area

Top level of house clearly shows balustrades in two locations >15m above natural ground level and commencement of construction of premises.

ITEM 3.2

MOD2023/0211 - 32 BOWER STREET MANLY - MODIFICATION OF DEVELOPMENT CONSENT DA2019/0916 GRANTED FOR DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE INCLUDING SWIMMING POOLS

REPORTING MANAGER

Rod Piggott

TRIM FILE REF

2023/670034

ATTACHMENTS

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

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A.** That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B.** THAT Council as the consent authority **approves** Development Consent to Mod2023/0211 for modification of Development Consent DA2019/0916 granted for demolition works and construction of a dwelling house including swimming pools on land at Lot 28 DP 8075, 32 Bower Street MANLY, subject to the conditions set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2023/0211
Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 28 DP 8075, 32 Bower Street MANLY NSW 2095
Proposed Development:	Modification of Development Consent DA2019/0916 granted for Demolition works and construction of a dwelling house including swimming pools
Zoning:	Manly LEP2013 - Land zoned C3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	The Trustees Of The Roman Catholic Church For The Archdiocese Of Sydney Andrew Warren Swan [REDACTED]
Applicant:	Mark Davies
Application Lodged:	10/05/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	18/05/2023 to 01/06/2023
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 26.82%
Recommendation:	Approval

EXECUTIVE SUMMARY

This modification application seeks consent for modification of Development Consent DA2019/0916 granted for demolition works and construction of a dwelling house including swimming pools.

The application is referred to the Development Determination Panel (DDP) due to the original determination of the application by DDP and that this modification application is made under s4.55(2) of the *Environmental Planning and Assessment Act 1979*, and that the proposed modifications make

alteration to (but retain) the maximum non-compliant height of 10.78 metres, being a 26.82% variation to the height of buildings development standard under the MLEP 2013.

Concerns raised in the objections predominantly relate to whether the proposed modifications amount to substantially the same development, and view sharing from the public domain and from others' properties.

Critical assessment issues included the proposed building height, the proposed setbacks, the height of the pools above ground, and whether the proposed modifications amount to substantially the same development to that for which consent was granted.

The 4.6 request for the non-compliance with height standard arises from reconfiguration of the approved built form with maintenance of the maximum approved building height of 10.78 metres.

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

PROPOSED DEVELOPMENT IN DETAIL

This modification application lodged pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* seeks to modify the built form approved under Development Consent DA2019/0916 as follows:

- Consolidation of two pavilions (referred to in the original assessment and hereon in this report as Buildings 2 & 3)
- Formation of a larger courtyard,
- Reorientation of the pavilions to align with eastern boundary,
- Relocation of the southern swimming pool to the courtyard,
- Reconfiguration of the northern swimming pool,
- Internal adjustments to provide consistent floor levels on the living level and include a lift,
- Reconfiguration of the roof forms, with new roof garden proposed on the northern pavilion,
- Alteration to the excavation volume by altering levels of the garage and the nearby bedroom level,
- Relocation of the driveway to the eastern boundary and the double garage closer to the driveway, and
- Revision of the landscape plan in accordance with the above.

Following a preliminary assessment of the application, Council raised concerns that would not allow for support of the application. The issues raised included:

- Suitability of the proposal under modification application
- Landscaping
- Stormwater
- Biodiversity
- Sydney Water Referral

In response to the concern raised the Applicant submitted additional information satisfying the concerns raised on 27 July 2023. In accordance with the Community Participation Plan, re-notification was not required, as Council was satisfied that there was no increased environmental impact.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Local Environmental Plan 2013 - 6.2 Earthworks

Manly Local Environmental Plan 2013 - 6.4 Stormwater management

Manly Local Environmental Plan 2013 - 6.5 Terrestrial biodiversity

Manly Local Environmental Plan 2013 - 6.8 Landslide risk

Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area

Manly Local Environmental Plan 2013 - 6.12 Essential services

Manly Development Control Plan - 3.4.3 Maintenance of Views

Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

SITE DESCRIPTION

Property Description:	Lot 28 DP 8075 , 32 Bower Street MANLY NSW 2095
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern (low) side of Bower Street. The site is dogleg in shape with a curved frontage of 30.645 metres along Bower Street, a rear boundary of 18.58 metres facing Shelley Beach and a surveyed area of 1,859m². The site has an approximate width of between 17 and 18 metres at the locations of the proposed buildings. The site is located within the C3 Environmental Management zone pursuant to the Manly Local Environmental Plan 2013 and has been predominantly

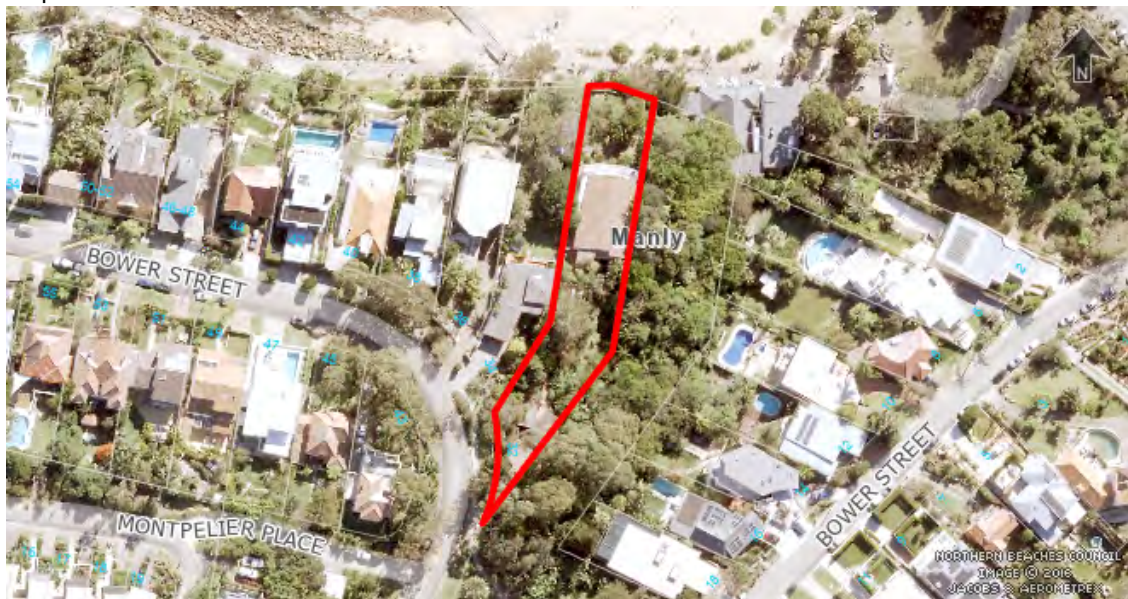
cleared for the purpose of the works approved under DA2019/0916 (the consent proposed to be amended by this application).

The site slopes downward from the front boundary to the rear boundary by an average of 22.62m. The site also has a crossfall which slopes downward from the western boundary to the eastern boundary by an average of 4.38m. The site is underlain by Hawkesbury Sandstone bedrock below a combination of variable depth topsoil/fill and residual/colluvium soil.

Adjoining and surrounding development is characterised by dwellings of varying age and architectural style with a predominant two storey scale. Bower Reserve abuts the site to the east and extends down from Bower Street to Marine Parade.

As noted above, Marine Parade is situated immediately to the north of the site and extends to the east and west to form a pedestrian promenade. The Boathouse Shelley Beach cafe is located to the north-east of the site.

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:

- DA0146/2016 for demolition of existing structures, three (3) lot Torrens Title Subdivision, construction of a dwelling house on each lot, swimming pools, and landscaping works. The

application was approved by the former Northern Beaches Independent Assessment panel (NBIAP) on 16 March 2017.

- Pre-lodgement meeting PLM2018/0299 was held on 13 December 2018 to discuss construction of a dwelling house.
- DA2019/0916 for demolition works and construction of a dwelling house including swimming pools was approved by the Development Determination Panel on 26 February 2020. This is the parent application for the current modification application.

Demolition for the purpose of DA2019/0916 has commenced. Construction subject of DA2019/0916 and Mod2023/0211 has not been commenced, except for a portion of the approved (but not modified) driveway.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2019/0916, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2019/0916 for the following reasons: The proposed modifications retain the single residential use of the site (being for a dwelling house). The proposed modifications do not alter the intent of the lot to be developed. The proposed modifications result in materially and essentially the same development as originally approved.

Section 4.55 (2) - Other Modifications	Comments
	The proposed modifications retain built form in the same general locations, while including consolidation of the two approved central pavilions. The proposed modifications retain the general composition of the site, being a dwelling house over multiple pavilions. The proposed modifications retain the same number of bedrooms, kitchens, living rooms, areas of private open space and recreation, and swimming pools. With the exception of the southern pool, these modified elements of the development are generally in the same vicinity as approved. The proposed modifications retain the approved building heights, and result in a comparable gross floor area. The proposed modifications result in comparable outcomes with respect to the applicable built form controls. As such, the proposed modifications result in comparable bulk and scale to the approved development. The changes sought will only be readily visible from within the site itself. With regard to environmental impact, there are no unreasonable privacy, shadowing or view impacts that result from the proposed modifications. The development retains a bulk and scale consistent with and comparable to that of nearby properties, with no additional impact upon the adjoining RE1 Zone to the rear or Foreshore Scenic Protection Area. Given the above, the proposed modifications amount to a substantially the same reconfiguration of the approved development only.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2019/0916 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with: (i) the regulations, if the	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.

Section 4.55 (2) - Other Modifications	Comments
regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and	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

Section 4.15 'Matters for Consideration'	Comments
Assessment Regulation 2021 (EP&A Regulation 2021)	condition of consent. <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. <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 stormwater and landscaping. <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 previously via a condition of consent. <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 previously via a condition of consent. <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 previously via a condition of consent. <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.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application that included a certificate (prepared by Bushfire Hazard Solutions, dated 10 February 2023) stating that the modifications 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 18/05/2023 to 01/06/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Ms Dorothy Gwyneth Burns	45 Bower Street MANLY NSW 2095

The following issues were raised in the submissions:

- Concern that the modified development is not substantially the same as that for which consent was granted.
- View loss from the public domain and from Nos. 35, 37, 39, and 43 Bower Street.

The above issues are addressed as follows:

Substantially the Same

Comment:

The proposed modifications are considered against Section 4.55 (2)(a) of the *Environmental Planning and Assessment Act 1979* in the section of this report relating to Section 4.15 of the same Act. Council is satisfied that modified development is substantially the same as that for which consent was granted under DA2019/0916.

View Loss

Comment:

The proposal has been assessed with respect to the requirements of Clause 3.4.3 of the Manly DCP in the section of this report relating to that clause. The assessment concludes that adequate view sharing is achieved.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	Original Comments Summary (22 June 2023): Updated arboricultural information was requested. Additional Information Comment (21 August 2023): The updated Arboricultural Impact Assessment is noted. The modification requires the additional removal of trees 25, 27 and 28. Tree 25 is an exotic species, and trees 27 and 28 have been heavily lopped. Trees 4 and 16 are also shown for removal; however, these trees have been previously removed. Should the modification application be approved, like for like native tree replacement shall be installed within the property boundaries to offset the further loss of existing trees. Landscape Referral supports the species selection outlined by Council's Bushland and Biodiversity team. The landscape proposal is generally supported, subject to conditions and tree replacement.
NECC (Bushland and Biodiversity)	Original Comments (26 June 2023): The proposal seeks approval for modifications to development consent DA2019/0916, granted for demolition works and construction of a dwelling house including swimming pools. The comments in this referral relate to the following applicable controls and provisions: • Biodiversity Conservation Act 2016 • Biosecurity Act 2015 • SEPP (Resilience and Hazards) 2021 - Coastal use area • Manly LEP - Clause 6.5 Terrestrial Biodiversity • Manly DCP - Clause 5.4.2 Threatened Species and Critical Habitat Lands The proposed modifications would take place within the previously approved footprint. The subject site is known habitat for the endangered population of Long-nosed Bandicoots and therefore, an updated Terrestrial Biodiversity Report has been submitted with the application and concluded that the proposed modifications will not represent a significant impact and "it is not likely that the proposal will have a significant impact on the Endangered Long-nosed Bandicoot population at North Head. Entry into the Biodiversity Offset Scheme (BOS) and further assessment in the form of a Biodiversity Development Assessment Report (BDAR) is not considered necessary for this population". This conclusion is concurred with. However, there are discrepancies between the submitted plans and documentation regarding the extent of additional tree removals

Internal Referral Body	Comments
	required to facilitate the modification. While the Arboricultural Impact Assessment indicates that no additional prescribed native trees are to be removed for the modification, and indicates that Tree 17 will be retained, the landscape plan indicates that four (4) additional prescribed native trees will be removed - specifically Trees 4, 27 and 28 (Cheese Trees, <i>Glochidion ferdinandi</i>) and Tree 17 (Port Jackson Fig, <i>Ficus rubiginosa</i>). In addition, aerial photography indicates that one or more of these trees have already been heavily pruned and/or removed without consent as per DA2019/0916. As per the Landscape Referral, additional information (e.g. amended arborist report and/or landscape plan) are required for the Biodiversity referral to be completed. In particular, Tree 17 should be retained given its biodiversity and amenity values. Should the application be approved, <i>Raphiolepis indica</i> is to be deleted from the landscape plan as it is considered an invasive species. Amended Comments (21 August 2023): The amended Arboricultural Impact Assessment advises the following: Tree 4 which was to be retained as part of the conditions of consent for DA2019/0916 has been removed as it was "mistakenly removed along with the <i>Pittosporum undulatum</i> [...] in the initial stages of site establishment" (Botanics P/L, June 2023). Trees 27 and 28 have continued to decline when they were originally deemed suitable for retention. A site visit undertaken on 17/08/2023 has confirmed that the trees are in decline and have little retention value. Their replacement will be conditioned with like for like replacements to ensure continuity of habitat on the site. Tree 17, a high value retention tree has continued to decay and is recommended for removal. However, the tree had previously been recommended for retention and had also shown signs of improvement. As the tree is prescribed and will now be removed, additional tree replacements will be conditioned. Amendments to the submitted landscape plan will be required to provide replacement canopy trees to compensate for tree removals and to retain wildlife habitat on the site, including habitat for the endangered population of long-nosed bandicoots.
NECC (Coast and Catchments)	The proposal seeks approval for modifications to development consent DA2019/0916, granted for demolition works and construction of a dwelling house including swimming pools. The comments in this referral relate to the following applicable controls, provisions and supporting information: • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Resilience and Hazards) 2021;

Internal Referral Body	Comments
	• State Environmental Planning Policy (Biodiversity & Conservation) 2021; • Sydney Harbour Foreshores and Waterways Area DCP; and • Relevant LEP and DCP clauses. The proposed modifications would take place largely within the previously approved footprint. The subject site is zoned C3 and is located in a foreshore scenic protection area and mapped as a landslip hazard. Manly LEP 2013 and Manly DCP 2013 Landslide/ Landslip Hazard Management The subject site is shown to be as “Landslide risk” on Council’s Landslide Risk Map in Manly LEP 2013. As such, Clause 6.8 (Landslide Risk) of the Manly LEP 2013 and Part 4, section 4.1.8 Development on Sloping Sites of the Manly DCP 2013 will apply to proposed development on the site. A Geotechnical Report by Crozier dated March 2023 assessing landslide/landslip hazard has been submitted with the DA. The report assessed that no geotechnical reason for these changes not to be approved, provided all works are undertaken as per the recommendations of their reports. As such, it is considered that the application does comply, subject to conditions, with the requirements of the Clause 6.8 (Landslide Risk) of the Manly LEP 2013 and Part 4, section 4.1.8 Development on Sloping Sites of the Manly DCP 2013. Foreshores Scenic Protection Area Management The subject site is also shown to be affected by the “Manly Foreshores Scenic Protection Area” on Council’s Foreshores Scenic Protection Area in Manly LEP 2013. As such, Section 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013 will apply to proposed development on the site. The proposed modifications are generally consistent with the design of the originally approved development and can comply with the required outcomes of section 5.4.1., subject to conditions. From a coastal risk management perspective the modification application is supported subject to coastal conditions additional to those applied to the original development consent (DA2019/0916).
NECC (Development Engineering)	Original Comments (30 June 2023): Council is not supportive of the proposed method of stormwater discharge for the following reasons:

Internal Referral Body	Comments
	1. The proposed discharge point is in a prominent area with high pedestrian and recreational traffic and the design will be pose a safety hazard to the public. 2. Visual pollution of the proposal. 3. Proposal does not address scour issues. Council advice is as follows: A. The applicant has the option to connect to an existing Council pipe or culvert. Advice from Councils Stormwater Operations & Planning section indicates that the 900 RCP that is assumed to be on the public walkway below 32 Bower Street diverts on to the beach to avoid hard sandstone. This will rule out connection to the pipe as Council will not accept pipe connections on the beach. The applicant may if they wish undertake investigation works at their expense to confirm the location of the pipe. If the proposed private pipe could connect to the 900 pipe, this would be acceptable to Council. B The applicant has the option to connect to Council Asset SPC40030 (Culvert). This option would require a sub-surface connection with a geotechnical study and detailed design. C. If the applicant cannot connect to a pipe system, Councils Low Level Property requirements come into effect. This would require an on-site detention system and a Level Spreader. Please refer to Councils Water Management for Development Policy Version 2 26 February 2021. The requirements for a Level Spreader are shown in Appendix 4. Council would be supportive of this measure subject to a detailed and compliant design. Updated Comments (3 September 2023): The applicant has chosen to connect to Councils 900 RCP. This is acceptable subject to detailed design and a Section 138 application. No further objections to the proposed development subject to the addition of the specified extra conditions and the removal of Condition of Consent No. 8 (Stormwater Disposal). All other engineering conditions of consent should be retained.
Parks, reserves, beaches, foreshore	Parks, Reserves and Foreshores note additional information has been received and no further information is required. Conditions imposed under DA2019/0916 remain.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of

External Referral Body	Comments
	surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development. Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 999238S_04 dated 1 March 2023).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	53

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or

an application for modification of consent) for any development carried out:

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

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

Comment:

The north-western corner of the rear of the site is located within the coastal environment area. No works are proposed in this portion of the site. As such, the proposed modifications to the approved development are not anticipated to result in any unreasonable adverse impact to the matters above.

- 2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*

- a) *the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or*
- b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
- c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment:

The proposed modifications to the approved development are designed, sited and will be managed so as to avoid adverse impact.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

- 1) *Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:*
 - a) *has considered whether the proposed development is likely to cause an adverse impact on the following:*
 - i) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - ii) *overshadowing, wind funnelling and the loss of views from public places to foreshores,*
 - iii) *foreshores,*
 - iv) *the visual amenity and scenic qualities of the coast, including coastal headlands,*
 - v) *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 modifications to the approved development do not impact on the matters above beyond that of the approved development. As such, the modifications are designed, sited, and will be managed to avoid adverse impact. The proposed bulk and scale of the development has been considered throughout this assessment, as detailed in this assessment report.

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 approved development been designed to respond to the topography of the site and provide appropriate waste and drainage management systems to avoid any increased risk of coastal hazard. The proposed modifications to the approved development are designed and sited so as not to cause increased risk of coastal hazard on the subject site or adjoining sites.

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

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	Building 1: Max. 7.0m (RL 29.80)	Max. 9.7m* (RL 29.80)	14.12%	No
		Building 2: Max. 9.28m (RL 26.90)	Buildings 2 & 3 (conjoined): Max. 10.78m (RL 26.68)	26.82%	No
		Building 3: Max. 10.89m (RL 26.68)			
		Building 4: Max. 9.4m (RL 23.32)	Max. 9.2m (RL 22.92)	8.23%	No
Floor Space Ratio	0.45:1 836.55m ²	0.435:1 808m ²	0.415:1 (772.2m ²)	-	Yes

* The maximum height of building is numerically larger due to reconfiguration of the pavilion such that it sits over a lower part of the ground, but retains the approved roof RL of 29.80.

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	Yes

Clause	Compliance with Requirements
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
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

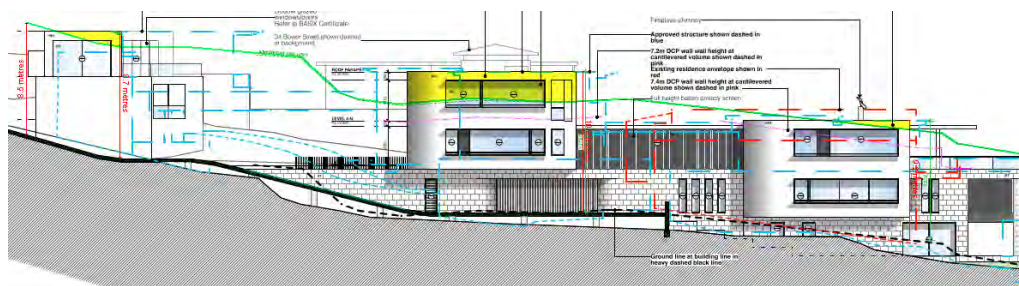
Detailed Assessment

4.6 Exceptions to development standards

Whilst the modification application will result in a building height that breaches the maximum permitted by Clause 4.3 of the MLEP 2013, the application does not strictly need to address the requirements of Clause 4.6. This application has been made under Section 4.55 of the *Environmental Planning and Assessment Act 1979*, which authorises the development for which consent was granted to be modified, notwithstanding any breach of development standards. As such, a written request to vary the development standard is not required.

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5 metres
Proposed:	Building 1: Max. 9.4 metres Building 2 & 3: Max. 10.78 metres Building 4: Max. 9.2 metres
Percentage variation to requirement:	Building 1: 14.12% Building 2 & 3: 26.82% Building 4: 8.23%



Above: The extent of the breaches to the height of buildings development standard, shown in yellow.

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

Clause 4.3 Height of Buildings 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*
- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

Comment:

As above, a written request is not required.

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

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

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

Comment:

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

Objectives of the Development Standard

The underlying objectives of Clause 4.3 Height of Buildings are addressed as follows:

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

Comment:

The proposed modifications retain the general configuration of the development, being separated pavilions with flat roof forms. In this way, the proposed modifications provide a suitable response to the steep sloping topography of the site. The proposal is consistent with and comparable to existing developments nearby, and is generally consistent with the desired future character of this locality.

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

Comment:

The proposed modifications retain compliance with the floor space ratio development standard, the intention of which is to control bulk and scale. The proposed modifications retain the general configuration of the development, being separated pavilions with flat roof forms, which breaks up and minimises the bulk and scale of the resultant dwelling.

(c) to minimise disruption to the following—

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

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

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

Comment:

The proposed modifications retain adequate view sharing, as demonstrated in the section of this report relating to Clause 3.4.3 Maintenance of Views of the MDCP 2013.

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

Comment:

The proposed modified development is designed and sited so as to retain adequate privacy for the subject site and the adjoining residential site to the west. The proposal results in an improved solar access outcome for that adjoining site, by consolidating Buildings 2 & 3.

(e) to ensure the height and bulk of any proposed building or structure in a recreation or conservation

zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Comment:

The subject site is not within a recreation zone or conservation zone.

Objectives of the Zone

The underlying objectives of the C3 Environmental Management zone are addressed as follows:

To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.

Comment:

The proposed modified development manages the ecological, cultural and aesthetic values of the site through its preservation of the unique topography evident on the site. The pavilion configuration enables an effective transition from residential land and the public reserve through the provision of dense landscaping throughout the eastern side of the site.

To provide for a limited range of development that does not have an adverse effect on those values.

Comment:

The proposed modified development will maintain the ecological, scientific, cultural and aesthetic values of the local area.

To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.

Comment:

The proposed modified development is sited to maintain and enhance vegetation. The proposed building heights, will not adversely affect the tree canopy nor dominate the natural scenic quality of the Shelley Beach foreshore.

To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.

Comment:

The proposed modified development is supported by a suitable landscape plan detailing adequate planting, and is designed to retain significant vegetation adjacent to Marine Parade and the Shelley Beach Reserve.

To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.

Comment:

The proposed modifications retain compliance with the required total open space and landscaped area controls, thereby allowing for deep soil landscaping and stormwater infiltration throughout the site. The proposal is supported by suitable stormwater management plans.

To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.

Comment:

The proposed modified pavilion forms enable the built form to satisfactorily respond to the existing vegetation, topography and surrounding land uses.

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

Clause 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development

consent to be granted.

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

6.2 Earthworks

The objectives of Clause 6.2 Earthworks require development:

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

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

- (f) the likelihood of disturbing relics*

Comment:

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

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

Comment:

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

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

Comment:

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

6.4 Stormwater management

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

(a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and

Comment:

The development will provide a suitable amount of permeable surfaces given the zoning of the land and the proposed use. In this regard, Council is satisfied that the design will maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water.

(b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and

Comment:

On-site stormwater retention has been incorporated into the development.

(c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.

Comment:

The proposal has been assessed by Council's Development Engineers who have raised no objections to approval, subject to conditions. In this regard, Council is satisfied that the development will minimise any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters.

6.5 Terrestrial biodiversity

The objective of this clause is to maintain terrestrial biodiversity by:

(a) protecting native fauna and flora, and

(b) protecting the ecological processes necessary for their continued existence, and

(c) encouraging the conservation and recovery of native fauna and flora and their habitats.

In this regard, before determining a development application for development on land to which this

clause applies, the consent authority must consider:

- (a) *whether the development is likely to have:*
- (i) *any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and*
 - (ii) *any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and*
 - (iii) *any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*
 - (iv) *any adverse impact on the habitat elements providing connectivity on the land, and*
- (b) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment:

The application was referred to Council's Bushland & Biodiversity team, who are supportive of the proposed works, subject to recommended conditions of consent. As such, the consent authority can be satisfied that the development will not have adverse impact on the matters above and that appropriate measures have been taken to avoid, minimise and mitigate the impacts of the development.

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 any significant adverse environmental impact, or*
- (b) *if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or*
- (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment:

The application was referred to Council's Bushland & Biodiversity team, who are supportive of the proposed works, subject to recommended conditions of consent. As such, the consent authority can be satisfied that the development is designed, sited and will be managed to avoid any significant adverse environmental impact.

6.8 Landslide risk

The objectives of this clause are to ensure that development on land susceptible to landslide—

- (a) *matches the underlying geotechnical conditions of the land, and*
- (b) *is restricted on unsuitable land, and*
- (c) *does not endanger life or property.*

In this regard, before determining a development application for development on land to which this clause applies, the consent authority must consider the following matters to decide whether or not the development takes into account the risk of landslide—

- (a) *site layout, including access,*
- (b) *the development's design and construction methods,*
- (c) *the amount of cut and fill that will be required for the development,*
- (d) *waste water management, stormwater and drainage across the land,*
- (e) *the geotechnical constraints of the site,*

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

Comment:

The development is supported by architectural plans, stormwater plans, a geotechnical report, and a waste management plan to demonstrate the proposal is acceptable with respect to the above matters. The application was referred to Council's Development Engineer, who is supportive of the proposal, subject to recommended conditions of consent.

Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and that—

(a) the development is designed, sited and will be managed to avoid any landslide risk or significant adverse impact on the development and the land surrounding the development, or

(b) if that risk or impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that risk or impact, or

(c) if that risk or impact cannot be minimised—the development will be managed to mitigate that risk or impact.

Comment:

The application was referred to Council's Development Engineer, who is supportive of the proposal, subject to recommended conditions of consent. As such, the consent authority can be satisfied that the proposed development is designed, sited and will be managed to avoid any landslide risk or significant adverse impact on the development and the land surrounding the development.

6.9 Foreshore scenic protection area

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

(a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,

(b) measures to protect and improve scenic qualities of the coastline,

(c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,

(d) measures to reduce the potential for conflict between land-based and water-based coastal activities.

Comment:

The subject site, while immediately adjoining the foreshore along Shelley Beach (Marine Parade), is set above the foreshore land. The subject site is also surrounded by dense vegetation, given the adjoining RE1 Public Recreation land to the east. The development is also proposed to be well-vegetated on the subject site. The site's location, configuration and landscaped setting assist in obscuring the development from view from the foreshore. In this way, the proposed development

- does not unreasonably impact upon the visual amenity of Shelley Beach and surrounds,
- protects and improves scenic quality along the coastline,
- is suitable in its site context, and
- does not result in conflict between land-based and water-based coastal activities.

6.12 Essential services

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

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

Comment:

The subject site is supplied with the above essential services. The approved development and proposed modifications retain and rely upon these services.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 1,859m ²	Requirement		Approved	Proposed	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 500m ² per dwelling		1 dwelling on 1,859m ² site	Unchanged	Yes
	Size: Min. 90m ²		808m ²	772.2m ²	Yes
4.1.2.1 Wall Height (based on gradient)	Building 1:	E: Max. 8m	Max. 5.6m	Max. 8.75m	No
		W: Max. 7.5m	Max. 7.0m	Max. 6.15m	Yes
	Buildings 2 & 3	E: Max. 7.2m	Max. 10.6m	Max. 10.15m	No
		W: Max. 7.1m	Max. 7.1m	Max. 6.75m	Yes
	Building 4:	E: Max. 7.4m	Max. 9.1m	Max. 9.2m	No
		W: Max. 7.8m	Max. 7.0m	Max. 6.8m	Yes
4.1.2.2 Number of Storeys	Max. 2		Max. 3	Max. 3	No
4.1.2.3 Roof Height	Height: Max. 2.5m		Flat	Flat	Yes
4.1.4.1 Street Front Setbacks	Min. 6m		Min. 4m	Min. 3.99m	No
4.1.4.2 Side Setbacks (based on wall height)	Building 1	W: Min. 2.05m	Min. 2m	Min. 1.815m	No
	Buildings 2 & 3	W: Min. 2.25m	Min. 1.3m	Min. 1.5m	No
	Building 4	W: Min. 2.27m	Min. 1.3m	Min. 1.5m	No
	Windows: 3m		E: Min. 1m	E: Min. 3.5m	Yes
			W: Min. 2m	W: Min. 1.5m	No
4.1.4.4 Rear Setbacks	Min. 8m		Min. 13m	Min. 9.5m	Yes
4.1.4.6 Setback to RE1	Building 1	Min. 6m (East)	Min. 700mm	Min. 6m	Yes
	Buildings 2 & 3		Min. 3m	Min. 3.5m	No
	Building 4		Min. 3.9m	Min. 3.5m	No

4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Total Open Space: Min. 55% of site (1,022.45m ²)		63.23% (1,176m ²)	59.8% (1,112m ²)	Yes
	Above Ground: Max. 25% of TOS (278m ²)		11.3% (133m ²)	12.77% (142m ²)	Yes
4.1.5.2 Landscaped Area	Landscaped Area: Min. 35% of TOS (389.2m ²)		~70% (825m ²)	48.85% (543.2m ²)	Yes
	3 Native Trees		>3 trees	>3 trees	Yes
4.1.5.3 Private Open Space	Min. 18m ² per dwelling		>18m ²	>18m ²	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Max. 50% of frontage, up to 6.2m		Garage does not present to street	Unchanged	Yes
4.1.9 Swimming Pools, Spas and Water Features	Pool 1 (South)	Max. 1m Above Ground	Max. 6m	Max. 1.6m	No
		Setback to Coping: Min. 1m	>1m	1.5m	Yes
		Setback to Water: Min. 1.5m	>1.5m	1.6m	Yes
	Pool 2 (North)	Max. 1m Above Ground	Max. 3m	Max. 3m	No
		Setback to Coping: Min. 1m	E: 3m	Min. 1.9m	Yes
			N: Min. 8.5m	Min. 7.2m	Yes
		Setback to Water: Min. 1.5m	E: 3.1m	Min. 2m	Yes
	N: Min. 8.6m		Min. 7.3m	Yes	
Schedule 3 Parking and Access	Min. 2 spaces		2 spaces	2 spaces	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.3.3 Footpath Tree Planting	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 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)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

Detailed Assessment

3.4.3 Maintenance of Views

A submission from No. 45 Bower Street to the south-west of the subject site raised concern that the proposed development will result in view loss to the public domain and Nos. 35, 37, 39 and 43 Bower Street. It should be noted no submissions were received from these properties. The proposed modifications are addressed with reference to the objectives of this control as follows:

Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.

Comment:

Given the angle and distance of views from Nos. 35, 37, 39 and 43 Bower Street, the proposed

modifications to the approved development will not result in any unreasonable disruption of views. The portion of the development at the highest point of the site is the southern pavilion for the gym and guest room (Building 1). This pavilion has a roof height of RL 29.80, being identical to the approved height. Below is a photograph taken from street level outside No. 39 Bower Street, demonstrating the subject site, the approximate location of the southern-most pavilion (marked in red), and the view.



Above: The view from the street outside No. 39 Bower Street.

The black construction site fencing shown at the subject site is approximately 2 metres in height above the level of the footpath, and the roof of the southern-most pavilion is 2.2 metres above the level of the footpath. The pavilion is anticipated to obstruct the view to existing trees only and not the ocean. Further, it should be noted that the dwellings on Nos. 35, 37, 39 and 43 Bower Street are set much higher than street level, so the impact to the view would be significantly less in reality than as depicted in the photograph. These properties would instead look over the top of the pavilion. The remainder of the development is set much lower down the slope of the site, so will not be perceived from the street or properties in question. The proposed modifications result in an almost identical view impact to the approved development, and the approved development was assessed and determined as being acceptable with respect to view sharing. Given these factors, consideration of the proposed works under the relevant planning principle set by the NSW Land and Environment court under *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140 is not necessary.

Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).

Comment:

From the points at which the view is available (on the footpath on the northern of Bower Street and from the nearby public recreation land) the view angle is due north over Nos. 34 and 36 Bower Street, to the north-east over the subject site. The view contains corridors to the ocean and distant headlands, obscured by vegetation. Given the retention of the approved building height to the southernmost pavilion, the angle of the subject site and the positions from which the view from the public domain is enjoyed, the proposed modifications to the approved development will not result in any perceptible additional obstruction beyond the approved development. The approved development was assessed and determined as being acceptable with respect to view sharing. Given these factors, consideration of the proposed works under the relevant planning principle set by the NSW Land and Environment court under *Rose Bay Marina Pty Limited v Woollahra Municipal Council and anor* [2013] NSWLEC 1046 is not necessary.



Above: The view towards the north from the footpath outside the subject site.



Above: The view towards the north from the land zoned RE1 Public Recreation to the east of the subject site.

Objective 3) To minimise loss of views, including accumulated view loss ‘view creep’ whilst recognising development may take place in accordance with the other provisions of this Plan.

Comment:

The proposed modifications will result in an almost identical impact on views than the approved development. The southernmost pavilion of the development retains the approved roof height of RL 29.80. The proposed modifications move the southern-most pavilion 100 millimetres to the south, which will result in an imperceptible change from approval.

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

There are no objectives of this control under which to consider the merits of this variation. This control instead relies on the objectives of Clause 4.3 Height of Buildings of the MLEP 2013. The proposal has been assessed against these objectives in the section of this report relating to Clause 4.6 Exceptions

to Development Standards of the MLEP 2013.

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

The proposed modifications include breaches to the front and western side setback controls, and the setback to RE1 land control, to the east.

- Building 1 includes a front setback of minimum 3.99 metres
- Building 1 includes a western side setback of minimum 1.815 metres, where 2 metres was approved and 2.05 metres is required.
- Buildings 2 & 3 and Building 4 include western side setbacks of minimum 1.5 metres, where 1.3 metres was approved and 2.25 (Buildings 2 & 3) or 2.27 (Building 4) metres are required.
- The proposed modifications include windows 1.5 metres from the western boundary, where 2 metres was approved and 3 metres is required.
- Buildings 2 & 3 and Building 4 include setbacks to the adjoining RE1 land (east) of 3 metres and 3.9 metres, respectively, where 6 metres is required.

The non-compliant elements are not dissimilar in extent to those approved under the original consent (DA2019/0916), and in some instances, the proposed modifications offer an improvement on the approved setbacks. The modified development is considered against the objectives of the control as follows:

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

Comment:

The proposed modifications to the approved development set the southern-most pavilion fronting the streetscape (Building 1) at the same maximum height, being RL 29.80. The proposed modifications shift the pavilion 100 millimetres to the south at 3.99 metres from the front boundary, which will result in an imperceptible difference from the approved 4 metre setback. The remainder of the development is set to the north, down the slope from the streetscape, so will not be readable from the street. The front setback area is proposed to be well-landscaped. The proposed modifications therefore retain the desired spatial proportions of the street, the street edge and the landscape character of the street, despite the non-compliant setbacks.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposed modifications retain a suitable level of privacy for the subject site and adjoining sites by orientating the majority of the indoor and outdoor recreational spaces to the north and east, towards public land. The proposal results in an improved solar access result to the adjoining residential property, in that it consolidates two of the pavilions into one (Buildings 2 & 3). The proposal is acceptable with respect to view sharing for the reasons detailed in the section of this report relating to Clause 3.4.3 Maintenance of Views of the MDCP 2013. The proposed modifications retain much the same presentation to the streetscape, as detailed above. The proposed modifications result in a

greater traffic movement outcome, by way of simplification of the driveway.

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

Comment:

The proposed modifications allow for flexibility in the built form on the site, without resulting in any unreasonable impacts to the subject site or surrounding land.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposed modifications retain compliant total open space and landscaped open space on the site. The proposal is supported by a suitable landscape plan, demonstrating acceptable planting. The proposed development does not unreasonably impact upon or detract from the context of the site, being adjacent to public recreation land to the north and east. The proposal does not impact upon urban bushland.

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

Comment:

The proposed modifications are certified as acceptable with respect to the bush fire prone status of the site, as detailed in the bush fire assessment report addendum submitted with the application.

4.1.9 Swimming Pools, Spas and Water Features

The proposed development includes two modified pools set 1.6 metres (southern pool) and 3 metres (northern pool) above ground, where the maximum allowable under this control is 1 metre. These pools were set 6 metres and 3 metres above ground in the approved development. The modified development is considered against the objectives of the control as follows:

Objective 1) To be located and designed to maintain the privacy (visually and aurally) of neighbouring properties and to minimise the impact of filter noise on neighbouring properties;

Comment:

The modified pools are designed and sited such that they do not result in any unreasonable impact to the privacy of the subject site or adjoining sites. The modification of the southern-most pool results in a better outcome, in that it is relocated to a more logical location on the site, being next to dense vegetation on the adjoining residential site to the west, rather than adjacent to the neighbouring dwelling. The southern-most pool is also significantly lower to the ground than as approved, which is a positive outcome. The location and nuisance of the pool filter is controlled by way of condition of consent.

Objective 2) To be appropriately located so as not to adversely impact on the streetscape or the established character of the locality;

Comment:

The pools are located such that they will not be perceived from the street level.

Objective 3) To integrate landscaping; and

Comment:

The proposed modifications retain compliant total open space and landscaped open space on the site. The proposal is supported by a suitable landscape plan, demonstrating acceptable planting, including around the pools.

Objective 4) To become an emergency water resource in bush fire prone areas.

Comment:

The subject site is classified as bush fire prone. The modified pools are able to be used as an emergency water resource.

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 inconsistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

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

PLANNING CONCLUSION

This proposal, for modification of Development Consent DA2019/0916 granted for demolition works and construction of a dwelling house including swimming pools has been referred to the Development Determination Panel (DDP). The application is referred due to the original determination of the application by DDP and that this modification application is made under s4.55(2) of the Environmental Planning and Assessment Act 1979, and that the proposed modifications make alteration to (but retain) the non-compliant height of 10.78 metres, being a 26.82% variation to the height of buildings development standard under the MLEP 2013.

The concerns raised in the objections have been addressed throughout this report, by demonstration of the modifications amounting to substantially the same development, and assessment of the proposed modifications against the objectives of Clause 3.4.3 Maintenance of Views of the MDCP 2013.

Critical assessment issues included the proposed building height, the proposed setbacks, the height of the pools above ground, and whether the proposed modifications amount to substantially the same development to that for which consent was granted.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2023/0211 for Modification of Development Consent DA2019/0916 granted for Demolition works and construction of a dwelling house including swimming pools on land at Lot 28 DP 8075,32 Bower Street, MANLY, subject to the conditions printed below:

Modification Summary

The development consent is modified as follows:

MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
PAN-323728 Mod2023/0211	The date of this notice of determination	Reconfiguration of the approved pavilions, driveway, pools, and landscaping. Additional Conditions:

		- Condition 1A Modification of Consent - Approved Plans and Supporting Documentation Amended Conditions: - Condition 2 Compliance with Other Department, Authority or Service Requirements - Condition 22 Tree Removal Within the Property - Condition 34 Project Arborist - Condition 35 Tree and Vegetation Protection - Condition 41 Landscape Works Deleted Conditions: - Condition 11 Amended Landscape Plan
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Modified conditions

A. Add Condition No.1A Modification of Consent - Approved Plans and Supporting Documentation, to read as follows:

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
A.01.01-A	A	General Arrangement / Site Plan	Eaton Molina Architects	7 March 2023
A.02.00-A	A	General Arrangement / Level 1 / Level 2 / Level 3	Eaton Molina Architects	7 March 2023
A.02.01-A	A	General Arrangement / Level 4 / Roof Plan	Eaton Molina Architects	7 March 2023
A.03.00-B	B	General Arrangement / East Elevation / West Elevation	Eaton Molina Architects	6 July 2023
A.03.01-A	A	General Arrangement / North Elevation / South Elevation	Eaton Molina Architects	7 March 2023
A.03.02-A	A	General Arrangement / Section A-A / Height Blanket Perspective	Eaton Molina Architects	7 March 2023
A.07.01-A	A	Site Plan / Marine Parade Stormwater Connection	Eaton Molina Architects	25 August 2023
L-S4.55-03	A	Tree Protection and Removal Plan	360 Degrees Landscape Architects	22 February 2023

L-S4.55-04	A	Landscape Plan - Masterplan	360 Degrees Landscape Architects	22 February 2023
L-S4.55-05	A	Landscape Plan - Level 1	360 Degrees Landscape Architects	22 February 2023
L-S4.55-06	A	Landscape Plan - Level 3	360 Degrees Landscape Architects	22 February 2023
L-S4.55-07	A	Landscape Plan - Level 4	360 Degrees Landscape Architects	22 February 2023
L-S4.55-08	A	Landscape Plan - Level 4	360 Degrees Landscape Architects	22 February 2023
D01	A	Stormwater Management Plan 1	iStruct Consulting Engineers	20 February 2023
D02	A	Stormwater Management Plan 2	iStruct Consulting Engineers	20 February 2023
D03	A	Stormwater Management Plan 3	iStruct Consulting Engineers	20 February 2023
D04	A	Sediment & Erosion Control Plan & Details	iStruct Consulting Engineers	20 February 2023
D05	A	Stormwater Outlet Plan	iStruct Consulting Engineers	25 August 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate No. 999238A_04	-	Eco Certificates Pty Ltd	1 March 2023
Bushfire Assessment Report Addendum	230316B	Building Code & Bushfire Hazard Solutions	10 February 2023
Geotechnical Assessment	2015-241	Crozier Geotechnical Consultants	8 March 2023
Terrestrial Biodiversity Report	Final	GIS Environmental Consultants	23 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.

B. Modify Condition 2 Compliance with Other Department, Authority or Service Requirements to read as follows:

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	2023/595456 Ausgrid - Referral Response - OH and UG Cables	15 September 2023
	2023/595450 Ausgrid - Referral Response - Overhead Cables	15 September 2023

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

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

C. Add Condition 6A Construction, Excavation and Associated Works Security Bond(s) to read as follows:

The applicant is to lodge a bond with Council for the following:

Drainage Works

As security against any damage or failure to complete the construction of stormwater drainage works required as part of this consent a bond of \$40,000.

Crossing / Kerb & Gutter / Footpath Works

As security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter, any footpath works and removal of any redundant driveways required as part of this consent a bond of \$20,000.

Reason: Protection of Council's infrastructure.

D. Delete Condition 11 Landscape Plan as follows:

DELETED

E. Add Condition 20A Submission Roads Act Application for Civil Works in the Public Road to read as follows:

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

The application is to include Civil Engineering plans for the design of private pipe connection from property to Council's stormwater infrastructure (900 RCP) which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plans shall be prepared by a qualified Civil Engineer. The design must include the following information:

1. Provide longitudinal section with all proposed invert levels and ground levels for proposed 300 mm pipe connection from Pit 18 to Council's 900 RCP.
2. Council does not support direct connection to its stormwater pipes for connecting pipes larger than 150 mm diameter. The connection shall be made using a junction pit.
3. Provide detailed design of proposed junction pit in accordance with Council's Standard Drawings, Drawing No. S1006. Use a solid cover.
4. The private connection to Council's 900 RCP shall be as far downstream as possible (90 degree connection) given site restraints. The connection shall be made under a paved surface and not on the beach sand.
5. The pipe connection to the proposed pit shall be as high as possible to limit hydraulic losses and subject to minimum cover requirements of Location 2 (a) (ii) (B) brick or unreinforced concrete for light vehicular loading of AS/NZS 3500.3:2003 or as amended.

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

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

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

F. Add Condition 20B Pre-Construction Stormwater Assets Dilapidation Report to read as follows:

The Applicant is to submit a pre-construction / demolition Dilapidation Survey of Council's Stormwater Assets prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset, to record the existing condition of the asset prior to the commencement of works. Council's Guidelines are available at:

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/2009084729guidelineforpreparingadilapidationsurveyofcouncilstormwaterassets2.pdf>

The pre-construction / demolition Dilapidation Report must be submitted to Council for approval and the Principal Certifier prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

G. Add Condition 20C Pre-Commencement Dilapidation Report to read as follows:

The applicant must prepare and submit a dilapidation report providing an accurate record of the existing condition of adjoining public property and public infrastructure (including roads, gutter, footpaths, etc). A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties.

The dilapidation report must be submitted to Council for written approval and the written approval is then to be submitted to the Certifier prior to the issue of the any Construction Certificate and the commencement of any works including demolition.

Reason: Protection of Council's infrastructure during construction.

H. Add Condition 20D Stormwater Disposal to read as follows:

The applicant is to submit Stormwater Engineering Plans for the new development within this

development consent in accordance with AS/NZS 3500 and Council's Water Management for Development Policy, prepared by an appropriately qualified and practicing Civil or Hydraulic Engineer who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) , indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to Council's stormwater pipe.

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.

I. Add Condition 20E Amendment of Landscape Plans to read as follows:

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

- Provision of the following
 - A total of three (3) Cabbage Tree Palms (*Livistona australis*)
 - Two (2) Cheese Tree (*Glochidion ferdinandi*)
 - One (1) Port Jackson Fig (*Ficus rubiginosa*)
- All areas identified in the landscape plan as "Tree and Shrub Planting" are to be amended so that they are composed entirely of locally native groundcover and/or mid-story species, except where canopy trees are proposed or existing. Groundcover species are to be identified on the plan at a density of 4 plants per square metre (4/m²); mid-story species are to be shown at a density of 2 plants per square metre (2/m²).
- Species are to be selected from the Manly Ward section of the Native Planting Guide available on Council's website, and are not to include hybrids or cultivars.
- The planting schedule is to be amended in accordance with the above.

The Landscape Plan is to be amended by a qualified landscape architect and certified by a suitably qualified ecologist as complying with the above requirements. The amended landscape plan and ecologist's certification are to be provided to the Principal Certifier prior to issue of the Construction Certificate.

Reason: To maintain and replace habitat on the site.

J. Add Condition 20F Erosion and Sediment Control Plan to read as follows:

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

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities);
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls;
- North point and scale.

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

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

K. Add Condition 20G Stormwater Management to read as follows:

Stormwater shall be disposed of in accordance with Council's Policy. A stormwater management plan is to be implemented to ensure that there is no increase in stormwater pollutant loads arising from the approved development. Water quality is not to be reduced from pre-development conditions and water quantity is not to be increased from pre-development levels.

Details demonstrating compliance are to be prepared by a registered professional stormwater engineer with chartered professional status (CP Eng) and who has an appropriate level of professional indemnity insurance and must be submitted to the Certifier for approval prior to issue of the Construction Certificate.

Reason: To ensure that the generation of additional stormwater discharge from the site, due to increases in impervious surfaces, does not adversely impact receiving waters.

L. Modify Condition 22 Tree Removal Within the Property to read as follows:

- a) 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:
- Tree 6: Pittosporum under 5m
 - Tree 7: Paperbark impacted by development with no alternative design potential (removal is subject to tree replacement within the development site)
 - Tree 8 and 9: Cocus Palms (exempt species)
 - Tree 10: Cheese Tree
 - Tree 13 and 14: Cordyline
 - Tree 15: Dragon Tree
 - Tree 17: Port Jackson fig
 - Tree 20: Chinese Cabbage Tree Palm (exempt species)
 - Tree 25: Camellia sasanqua
 - Tree 26: Macadamia impacted by development with no alternative design potential (removal is subject to tree replacement within the development site)
 - Tree 27 & 28: Glochidion ferdinandi
 - Tree 32: dead Ficus tree stump

- 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.

M. Modify Condition 34 Project Arborist to read as follows:

- a) A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged 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 in the tree protection zones of trees to be retained.

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.

N. Modify Condition 35 Tree and Vegetation Protection to read as follows:

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.

O. Add Condition 40A Wildlife Protection to read as follows:

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

If an uninjured Long-nosed Bandicoot enters the worksite or is found during a survey of holes/stockpiles, works must cease until the Bandicoot has safely vacated the worksite. Any injured or dead Long-nosed Bandicoots found within the worksite must be reported to the National Parks & Wildlife Service (NPWS). For assistance to relocate a Bandicoot from the worksite, or to report a dead or injured Bandicoot, please contact:

- National Parks & Wildlife Service – Duty Officer (9457 9577)

Reason: To protect native wildlife.

P. Add Condition 40B Protection of Habitat Features to read as follows:

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.

Q. Add Condition 40C Geotechnical Issues to read as follows:

All conditions outlined in the Geotechnical Assessment Reports for 32 Bower Street, Manly prepared by Crozier Geotechnical Consultants dated 17 January 2019 and 8 March 2023 are to be complied with and adhered to throughout development.

Reason: To ensure excavation, foundations and retaining structures are undertaken in an appropriate manner and are structurally sound.

R. Add Condition 40D Stockpiling Materials to read as follows:

During construction, all material associated with works is to be contained at source, covered and must be within the construction area. All material is to be removed off site and disposed of according to the waste management plan and applicable regulations. The property is to be kept clean and any building debris and waste removed as frequently as required to ensure no material enters receiving waters.

Reason: To ensure pollution control measures are effective to protect the aquatic habitats within

receiving waters throughout the construction period.

S. Modify Condition 41 Landscape Works to read as follows:

- a) Landscape works are to be implemented in accordance with the approved amended Landscape Plan(s), and inclusive of the following conditions:
- i) Planting shall be installed as indicated on the approved Landscape Plan(s) unless otherwise imposed by any conditions,
 - ii) At minimum two (2) *Glochidion ferdinandi* shall be installed within the property boundary, one in the rear setback and one in the front setback; three (3) *Livistona australis* and one (1) *Ficus rubiginosa* shall be installed within the property boundaries,
 - iii) All native tree planting shall be a minimum pre-ordered planting size of 100 litres or as otherwise scheduled if greater in size; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth generally, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings and other trees or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
 - iv) Mass planting shall be installed in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,
 - v) The area in the rear setback (adjacent to Marine Parade) shown as existing garden to be retained shall be mass planted in accordance with Council's Bushland and Biodiversity's Amendment of Landscape Plans condition,
 - vi) 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,
 - vii) Where the property is certified Bush Fire Prone Land, any new planting may be managed in accordance with Planning for Bushfire Protection 2019; the trees specified in ii) shall take priority for installation should APZ requirements limit proposed tree planting.

- b) 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.

T. Add Condition 47A Post-Construction Stormwater Assets Dilapidation Report (Council Stormwater Assets) to read as follows:

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.

U. Add Condition 47B Certification of Civil Works and Works as Executed Data in accordance

with Road Act Approval to read as follows:

The Applicant shall submit a certification by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) that the completed works have been constructed in accordance with this consent and the approved Section 138 and/or Construction Certificate plans. Works as Executed data certified by a registered surveyor in relation to boundaries and/or relevant easements, prepared in accordance with Council's 'Guideline for preparing Works as Executed data for Council Assets' in an approved format shall be submitted to the Principal Certifier for approval prior to the issue of the Occupation Certificate.

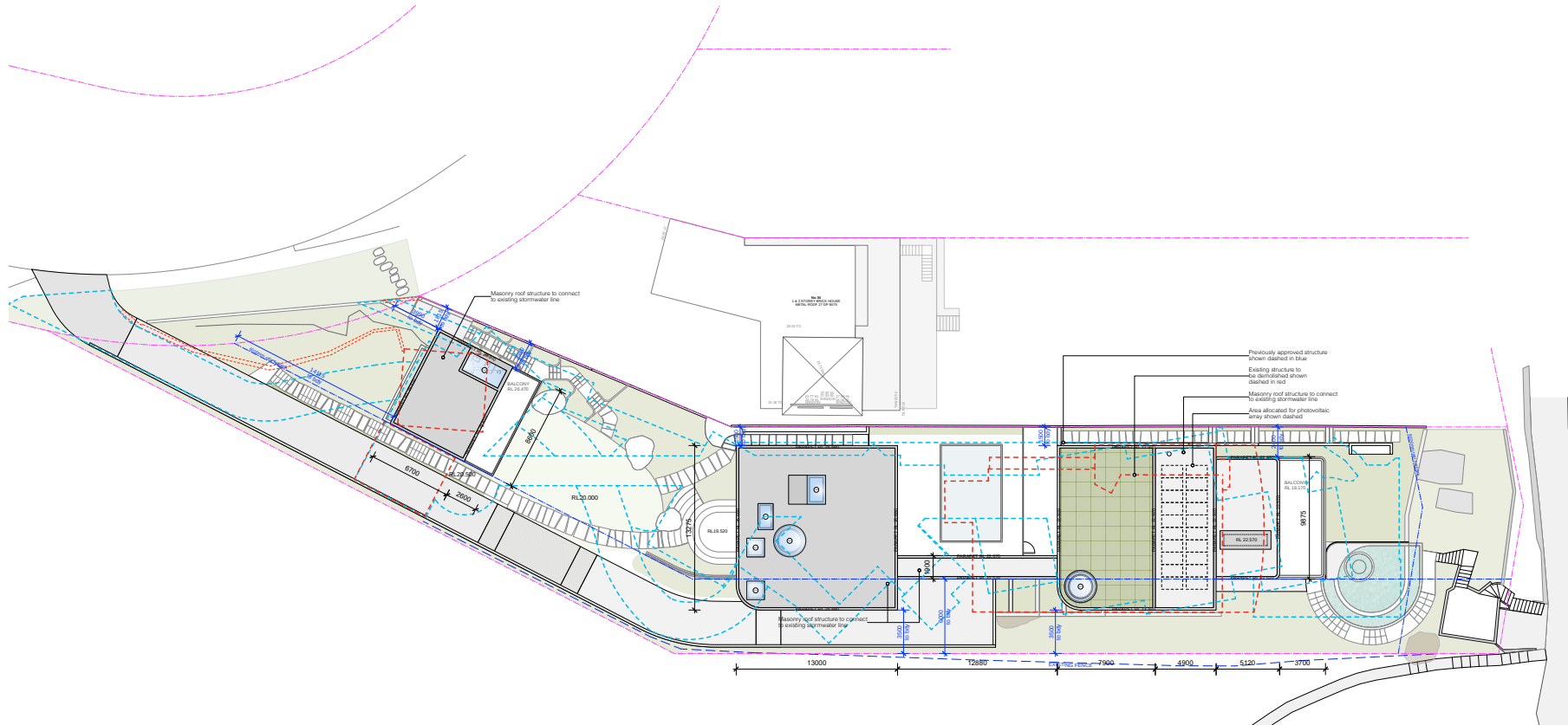
Reason: To ensure compliance of works with Council's specification for engineering works.

V. Add Condition 47C No Weeds Imported On To The Site to read as follows:

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

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

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



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Client
BOWER RESIDENCE

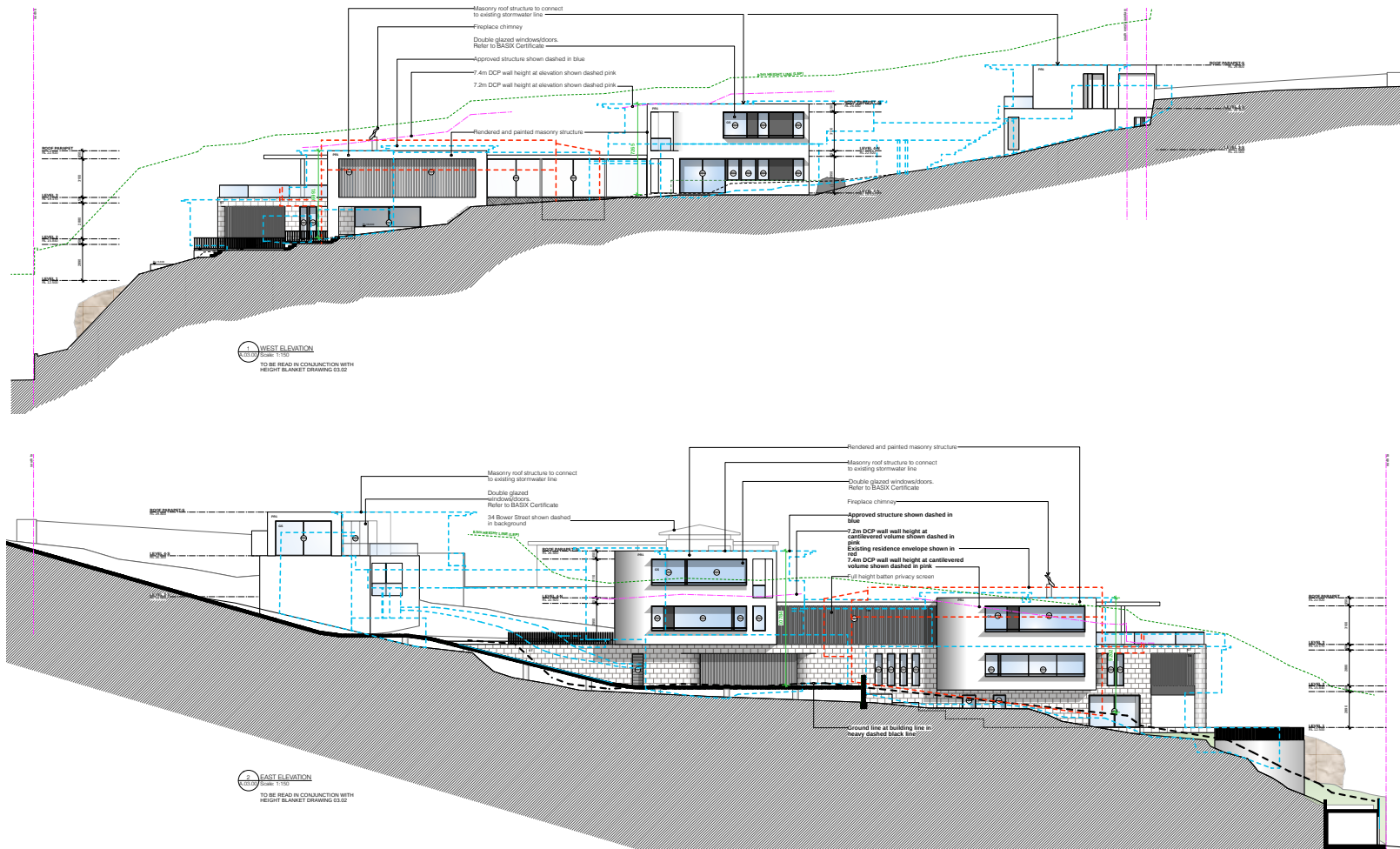
Address
32 Bower Street Manly



A 54.55 Submission

07.03.2023

1:100 @ A1, 1:200 @ A3
scale project number BB
0000 drawn by
drawing title GENERAL ARRANGEMENT
SITE PLAN drawing number A.01.01-A



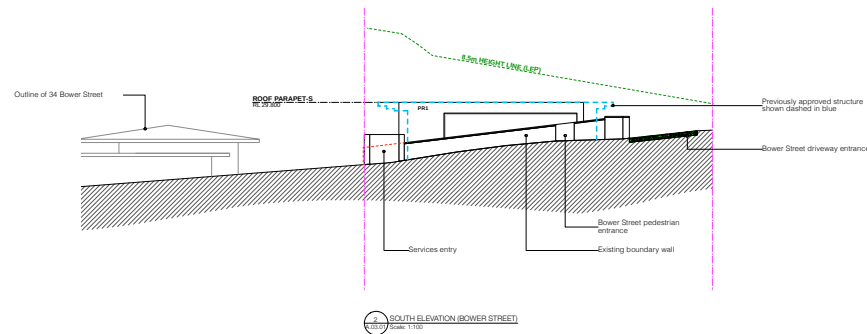
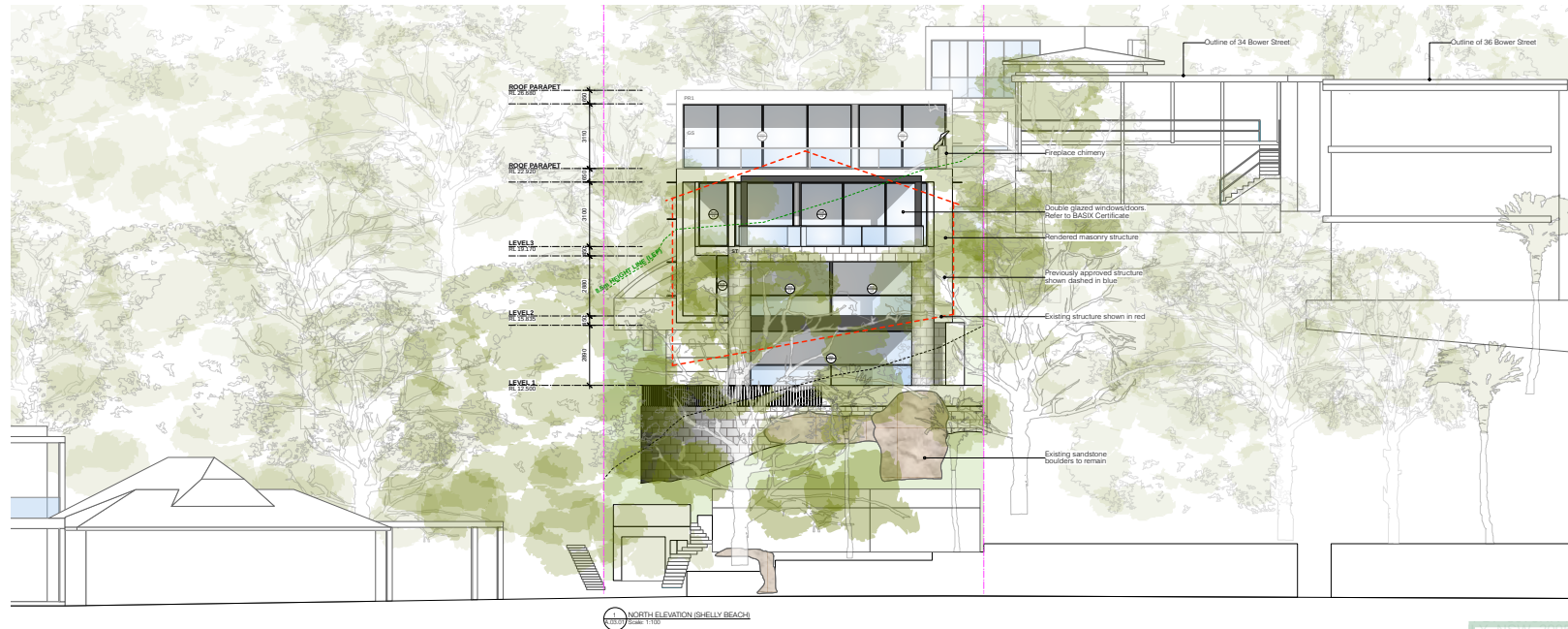
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Client
BOWER RESIDENCE

Address
32 Bower Street Manly

B 0433 Submission - Additional Information
06.07.2023
07.03.2023

1:100 @ A1, 1:200 @ A3
scale project number BB
0000
drawing title
**GENERAL ARRANGEMENT
EAST ELEVATION
WEST ELEVATION**
drawing number
A.03.00-B



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Client
BOWER RESIDENCE

Address
32 Bower Street Manly

LEGEND

existing structure to be retained
proposed brickwork structure
proposed lightweight structure
proposed concrete structure
existing structure to be demolished

landscaping - refer to landscape architect's plans
earth ground condition unknown
proposed 18' wall

1:100 @ A1, 1:200 @ A3
scale project number
0050 BB
drawn by

GENERAL ARRANGEMENT
NORTH ELEVATION,
SOUTH ELEVATION,
SOUTH ELEVATION

drawing number
A.03.01-A

54.55 Submission

07.03.2023

ITEM 3.3	DA2023/0814 - 13 CRESCENT STREET FAIRLIGHT - ALTERATIONS AND ADDITIONS TO A SEMI-DETACHED DWELLING
REPORTING MANAGER	Rod Piggott
TRIM FILE REF	2023/670068
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations 3 ↓ Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2023/0814 for alterations and additions to a semi-detached dwelling on land at Lot 1 DP 528835, 13 Crescent Street FAIRLIGHT, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0814
Responsible Officer:	Jordan Howard
Land to be developed (Address):	Lot 1 DP 528835, 13 Crescent Street FAIRLIGHT NSW 2094
Proposed Development:	Alterations and additions to a semi-detached dwelling
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Alistair Wishart Gibson Gemma Francesca Dawson
Applicant:	Rapid Plans Pty Ltd
Application Lodged:	28/06/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	10/08/2023 to 24/08/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 8.7% 4.4 Floor space ratio: 20.7%
Recommendation:	Approval
Estimated Cost of Works:	\$ 118,800.00

EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a semi-detached dwelling.

The application is referred to the Development Determination Panel (DDP) due to a request to vary the floor space ratio development standard, outlined in Clause 4.4 Floor Space Ratio of the Manly Local Environmental Plan 2013, by greater than 10%. The development also includes a request to vary the height of buildings development standard, outlined in Clause 4.3 Height of Buildings of the Manly Local Environmental Plan 2013, however, the variation requested is less than 10%.

The 4.6 request for the non-compliance with height of buildings standard arises from the construction of a rearward first floor extension, which has height of 9.24m, representing a 8.7% variation to the 8.5m development standard. The non-compliance arises as the site as existing has a rear excavated basement level, resulting in the height of the proposal being non-complaint where proposed over this level. If measured to the extrapolated natural ground level, the height would be 8.417m, complaint with the development standard. Furthermore, the front facade is maintained and the proposed additions are located behind the existing roof line, reducing visual appearance from the street. It is not considered that the development presents unreasonable bulk or scale, or unreasonable impacts on adjoining properties.

The 4.6 request for the non-compliance with FSR standard arises from a proposed 17.13sqm increase in floorspace from 146.17sqm (FSR 0.65:1) to 163.3sqm (FSR 0.72:1). This represents a 20.7% variation to the required FSR of 0.6:1 or 135.3sqm. As stated above, the front facade is maintained, the proposed additions are located behind the existing roof line and the proposal is not considered to present unreasonable bulk or scale, or unreasonable impacts on adjoining properties.

This report concludes with a recommendation that the DDP permit a variation of Clause 4.3 Height of Building and Clause 4.4 Floor Space Ratio development standards pursuant to Clause 4.6 of the MLEP 2013, and grant approval to the development application, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

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

- New rear upper floor addition comprising of a new master bedroom, study / new bedroom and expansion of an existing bathroom.
- New windows & doors.
- New sheet metal roof & skylights.

Additional information was requested in relation to Clause 4.3 Height of Buildings, Clause 4.4 Floor Space Ratio & Clause 4.6 Exceptions to Development Standard of the Manly Local Environmental Plan 2013, as well as in relation to Clause 4.1.4 Setbacks (front, side and rear) and Building Separation of the Manly Development Control Plan. Additional and amended information and plans were provided. Additional information and amended plans did not require re-notification in accordance with the Northern Beaches Council Community Participation Plan.

ASSESSMENT INTRODUCTION

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

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

SITE DESCRIPTION

Property Description:	Lot 1 DP 528835 , 13 Crescent Street FAIRLIGHT NSW 2094
Detailed Site Description:	The subject site consists of one (1) allotment located on the western side of Crescent Street. The site is generally regular in shape with a frontage of 7.855m along Crescent Street and a depth of 30.225m. The site has a surveyed area of 225.5sqm. The site is located within the R1 General Residential zone of the MLEP 2013 and accommodates a semi-detached dwelling. The site slopes from the front (east) down to the rear (west), with an approximate crossfall of 1.5m. The site contains a garden bed and grass at the front of the property, and some vegetation in the rear. There are no details of any threatened species on the subject site. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by semi-detached dwellings, dwelling houses and residential flat buildings. The adjoining property to the north contains an approximately 4 storey residential flat building.

Map:



SITE HISTORY

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

Development Application No. 517/04 for alterations and additions to a semi detached dwelling including attic room and en-suite was approved by Manly Council on 8 September 2005.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	These matters have been addressed via a condition of consent. <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. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to Clause 4.3 Height of Buildings, Clause 4.4 Floor Space Ratio & Clause 4.6 Exceptions to Development Standard of the Manly Local Environmental Plan 2013, as well as in relation to Clause 4.1.4 Setbacks (front, side and rear) and Building Separation of the Manly Development Control Plan. <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. <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. <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. <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.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in	See discussion on “Notification & Submissions Received” in this report.

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 10/08/2023 to 24/08/2023 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
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	The proposal has been referred to Heritage, as it adjoins a heritage item and within the vicinity of a heritage item, listed in Schedule 5 of Manly Local Environmental Plan 2013.
	Item I2 - All stone kerbs - Manly municipal area
	Item I47 - Semidetached houses - 16 and 18 Crescent Street
	Details of heritage items affected
	Details of the items as contained within the Manly heritage inventory are as follows:
	Item I2 - All stone kerbs
	<u>Statement of significance</u>
	Stone kerbs are heritage listed.
	<u>Physical description</u>
	Sandstone kerbing to streets relating to paving and kerbing of streets in the nineteenth century. Mostly located within Manly Village area and adjacent lower slopes of Eastern Hill and Fairlight.
	Item I47 - Semi-detached houses

Internal Referral Body	Comments		
	<u>Statement of significance</u> A good example of semi-detached housing c.1900 in local area.		
	<u>Physical description</u> Stuccoed brick semi-detached cottages with iron roof. Original diamond pattern slate roof now extant only on front portico. Significant elements include: portico; patterned glazing bars; false dormers with render decoration and turned verandah posts.		
	<u>Other relevant heritage listings</u>		
	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	
	<u>Consideration of Application</u>		
	The proposal seeks approval for alterations and additions to the existing semi detached dwelling, which is not a heritage listed item, however, it is part of a group of identical Federation style semi detached dwellings built in the early 1900s. It is appreciated that the proposal retains most of the original layout and the original fabric including the front fence. However, the roof of the proposed extension should preferably be lower than the original ridge level to allow the interpretation of the original roof form and to differentiate the new addition. The external colour scheme is required to be recessive to retain the integrity of the original building together with the adjoining semi.		
	Given the proposed works are mainly confined to the rear and do not involve any works at the street frontage the proposal is considered to not impact upon the significance of the heritage items.		
Therefore, no objections are raised on heritage grounds subject to two conditions.			
<u>Consider against the provisions of CL5.10 of MLEP 2013.</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No			

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

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. A495180, dated 26 April 2023).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.24m	8.7%	No
Floor Space Ratio	FSR: 0.6:1 (135.3sqm)	FSR: 0.72:1 (163.3sqm)	20.7% (28sqm)	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Height of Buildings Development Standard

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.24m
Percentage variation to requirement:	8.7%

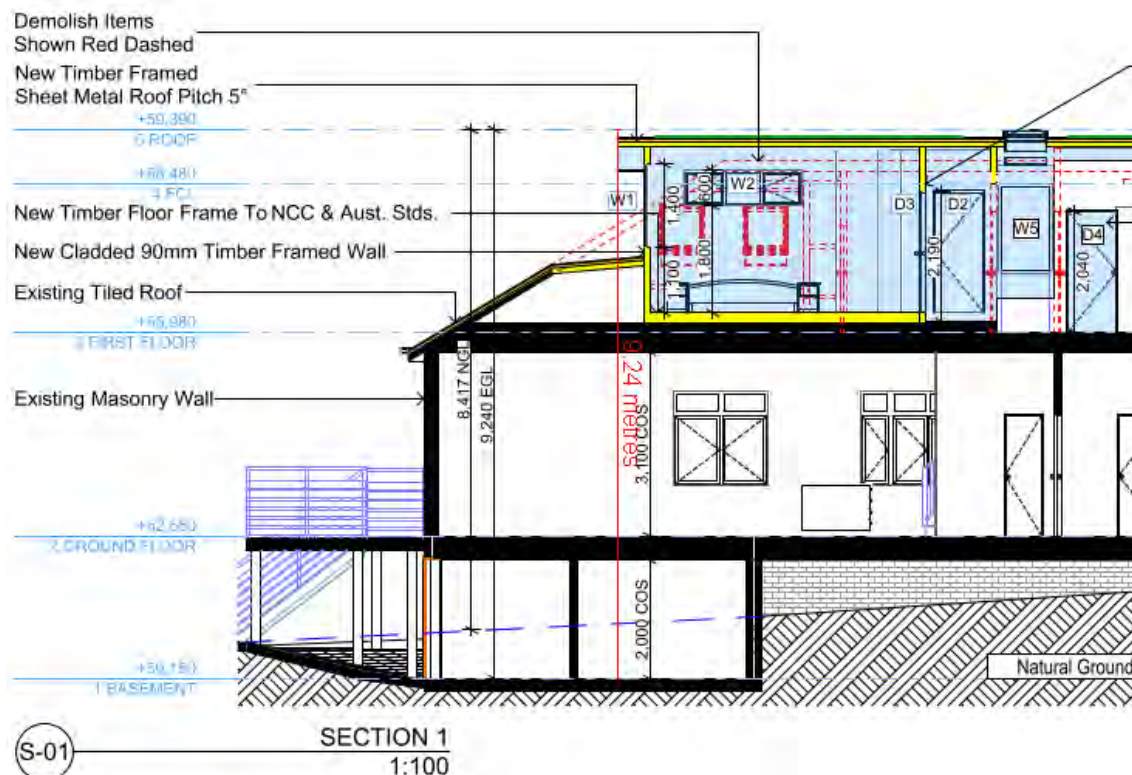


Figure 1 - Extract from Section 1 (Drawing No. DA3000, Rev. 1, dated 3 October 2023) depicting building height.

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- The development complies with the relevant objectives of the R1 General Residential of the MLEP 2013.
- The development complies with the relevant objectives of the Height of Buildings development standard of the MLEP 2013, notwithstanding the non-compliance.
- The existing semi-detached dwelling has excavation for a rear basement level which results in the height non-compliance as measured from the existing ground level. If measured to the extrapolated natural ground level, the height would be 8.417m, compliant with the development standard. This is more reflective of the visual appearance of the height, as this excavation at the rear is not readily discernable from the street.
- The new works to the existing dwelling on the site will maintain a dwelling on the subject site that will be generally consistent with the adjoining residential development, in regard to size and configuration.
- The first floor addition is located to the rear of the existing property and is set behind and below the existing roof line, reducing its visual appearance to the street.
- The proposed works provide a more efficient and orderly development on the land that is of high-quality architectural design which maximises the sites development potential along with providing appropriate housing stock within the locality.

- Although the bulk & scale of the building is slightly increased, the overall size & bulk in relation to the surrounding neighbourhood is not unreasonable, particularly considering development on the adjoining sites.
- The proposed works do not create adverse amenity impacts (view loss, overshadowing, privacy) to adjoining properties.

The arguments provided by the applicant are considered reasonable and acceptable. The non-compliance arises as the building as existing has a rear excavated basement level, resulting in the height of the proposal being non-complaint where proposed over this level. If measured to the extrapolated natural ground level, the height would be 8.417m, complaint with the development standard. The front facade is maintained and the proposed additions are located behind and below the existing roof line, reducing visual appearance from the street. Furthermore, it is not considered that the development presents unreasonable bulk or scale, particularly considering the adjoining property to the north (15 Crescent Street) is a large, bulky residential flat building (see *Figure 2* below). Furthermore, the proposal does not create any adverse amenity impacts (view loss, overshadowing, privacy) to adjoining properties.



Figure 2 - Subject site (left) and adjoining property to the north (15 Crescent Street) (right) to demonstrate neighbouring scale of development and existing roof form at the subject site, behind

which the proposal is located.

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 variation arises from existing site excavation, creating the height breach above this rear portion of excavation. If measured to the extrapolated natural ground level, the height would be compliant with the development standard. This is the visual appearance of the development from the public domain, as this excavation is not readily discernable. The majority of the proposal complies with the maximum height control, is commensurate to surrounding residential development within the area and is below and behind the existing roof line.

b) to control the bulk and scale of buildings,

Comment:

The proposal is considered to be compatible with the height, bulk and scale of surrounding and nearby development. The front facade is maintained and the proposed additions are located behind the existing roof line, reducing visual appearance from the street. It is not considered that

the development presents unreasonable bulk or scale, particularly considering the adjoining property to the north (15 Crescent Street) is a large, bulky residential flat building.

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:

No concerns have been raised in regard to views. The proposal provides an acceptable level of view sharing to public and private spaces and does not result in unreasonable view loss.

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

Comment:

The integration of the extension into the roof form of the existing semi-detached dwelling, behind and below the existing roof, results in a proposal that casts minimal additional shadows, which shade only roof sections of the adjoining semi-detached dwelling. The proposal is not considered to result in unreasonable overshadowing to public or private spaces

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

Comment:

The subject site is not in a recreation or environmental protection zone.

Zone objectives

The underlying objectives of the R1 General Residential zone are:

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

Comment:

The proposal is for alterations and additions to a semi-detached dwelling. The proposal provides for the housing needs of the community, in providing for the housing needs of the occupants and future occupants through alterations and additions to the existing development.

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

Comment:

The proposal is for alterations and additions to a semi-detached dwelling. In this regard, it is facilitating the alteration of a type of housing, which is one of many types within the locality.

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

Comment:

Non-residential land uses are not proposed on the subject site. However, the proposal provides for the residential needs of current and future occupants.

Conclusion:

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

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

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

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

Floor Space Ratio Development Standard

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.6:1 (135.3sqm)
Proposed:	0.72:1 (163.3sqm)
Percentage variation to requirement:	20.7%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.4 - Floor space ratio 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 4.4 - Floor space ratio development standard is not expressly excluded from the operation of this clause.

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- The development complies with the relevant objectives of the R1 General Residential of the MLEP 2013.
- The development complies with the relevant objectives of the FSR development standard of the MLEP 2013, notwithstanding the non-compliance.
- The new works to the existing dwelling on the site will maintain a dwelling on the subject site that will be generally consistent with the adjoining residential development, in regard to size and configuration.
- The first floor additions is located to the rear of the existing property and is set behind and below the existing roof line, reducing its visual appearance to the street.
- The proposed works provide a more efficient and orderly development on the land that is of high-quality architectural design which maximises the sites development potential along with providing appropriate housing stock within the locality.
- Although the bulk & scale of the building is slightly increased, the overall size & bulk in relation to the surrounding neighbourhood is not unreasonable, particularly considering development on the adjoining sites.
- The proposed works do not create adverse amenity impacts (view loss, overshadowing, privacy) to adjoining properties.

The arguments provided by the applicant are considered reasonable and acceptable. It should be noted that the lot is undersized, with a site area of 225.5sqm within an area with a minimum lot size

control of 250sqm. Whilst the proposal would still be non-compliant with FSR if calculated based on a lot size of 250sqm (refer to the section of this report on MDCP Clause 4.1.3 Floor Space Ratio (FSR) for details, as the MDCP provides guidance on assessing FSR variations), the non-compliance would be reduced from 20.7% to 8.9%. The dwelling as existing is non-compliant with the FSR development standard, currently exhibiting an FSR of 0.65:1 (146.17sqm). The proposed works add 17.13sqm of additional floor space at the first floor level. The front facade is maintained and the proposed additions are located behind and below the existing roof line, reducing visual appearance from the street. Furthermore, it is not considered that the development presents unreasonable bulk or scale, particularly considering the adjoining property to the north (15 Crescent Street) is a large, bulky residential flat building (see *Figure 2* in the section above). Furthermore, the proposal does not create any adverse amenity impacts (view loss, overshadowing, privacy) to 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 Floor Space Ratio 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 4.4 – 'Floor space ratio' of the MLEP 2013 are:

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

a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,

Comment:

The proposal is considered to be compatible with the height, bulk and scale of surrounding and nearby development. The front facade is maintained and the proposed additions are located behind and below the existing roof line, reducing visual appearance from the street. It is not considered that the

development presents unreasonable bulk or scale, particularly considering the adjoining property to the north (15 Crescent Street) is a large, bulky residential flat building. The proposed development is considered to maintain the existing and desired streetscape, whilst providing for improvements to the housing stock to benefit current and future occupants of the dwelling.

b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,

Comment:

The development does not obscure important landscape and townscape features, being located located behind and below the existing roof line. No concerns have been raised in regard to views.

c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,

Comment:

Given the points discussed above, the proposed alterations and additions are considered to maintain an appropriate visual relationship between new development and the existing character of the area. Landscaped area is not proposed to be changed by the proposal, which is entirely located within the footprint of the existing building.

d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,

Comment:

The proposal does not create any adverse amenity impacts (view loss, overshadowing, privacy) to adjoining properties, adjoining land or the public domain.

e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

Comment:

The proposal is not located on industrial, employment or commercially zoned land and is proposing alterations and additions to a semi-detached dwelling. As such, this objective is not relevant in this case.

Zone objectives

The underlying objectives of the R1 General Residential zone are:

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

Comment:

The proposal is for alterations and additions to a semi-detached dwelling. The proposal provides for the housing needs of the community, in providing for the housing needs of the occupants and future occupants through alterations and additions to the existing development.

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

Comment:

The proposal is for alterations and additions to a semi-detached dwelling. In this regard, it is facilitating the alteration of a type of housing, which is one of many types within the locality.

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

Comment:

Non-residential land uses are not proposed on the subject site. However, the proposal provides for the residential needs of current and future occupants.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the Floor Space Ratio development standard and the objectives of the R1 General Residential zone.

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

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

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

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 225.5sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Dwelling Size: 119sqm (5 bedrooms, 2 bathrooms)	167.2sqm	-	Yes
4.1.2.1 Wall Height	N: 6.9m (based on gradient 1:15)	7.8m	13%	No
4.1.2.2 Number of Storeys	2	2	-	Yes
4.1.2.3 Roof Height	Height: 2.5m	0.6m	-	Yes
	Pitch: maximum 35 degrees	5 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Behind existing 7.8m first floor setback, consistent with prevailing setback	-	Yes
4.1.4.2 Side Setbacks and Secondary Street	N: 2.6m (based on wall height 7.8m)	2.6m - 3.1m	-	Yes

Frontages	No new windows within 3m of a side boundary	4 new windows proposed within 3m of a side boundary, closest 2.6m	N/A	No
4.1.4.4 Rear Setbacks	8m	8m	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% (124sqm) of site area	31.4% (70.8sqm)	42.9% (53.2sqm)	No but existing and unchanged
	No more than 25% (17.7sqm) total open space above ground	(15.2sqm)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% (24.8sqm) of open space	30.6% (21.7sqm)	12.5% (3.1sqm)	No but existing and unchanged
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	0 spaces	100%	No but existing and unchanged

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	N/A	N/A
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

Detailed Assessment

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

Description of non-compliance

Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height) stipulates that walls are not to exceed:

- 6.9m (based on gradient 1:15) for the northern elevation.

The proposal present a non-compliant wall height on the northern elevation of 7.8m, representing a variation of 13% to the control.

Merit consideration

There are no underlying objectives of this control under which to consider the merits of this variation. This control instead relies on the objectives for the Height of Buildings development standard at Clause 4.3 in the Manly LEP 2013. The proposal has been assessed against these objectives under Clause 4.6, above in this report. In summary, the proposal is considered to meet the objectives of the height of buildings development standard.

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

4.1.3 Floor Space Ratio (FSR)

The proposed development has a floor space ratio of 0.72:1 (163.3sqm), which represents a variation of 20.7% (28sqm) to the prescribed 0.6:1 (135.3sqm) FSR requirement.

Clause 4.1.3 Floor Space Ratio (FSR) of the MDCP includes guidance for assessing variations where allotments are undersized. The subject site is 225.5sqm, and the minimum lot size as stipulated by

Clause 4.1 Minimum subdivision lot size of the MLEP 2013 is 250sqm 9 (Area C). Therefore, the subject site is undersized.

The variation allows for the calculation of FSR based on a 250sqm lot size in this instance. If the lot were to have a 250sqm lot size, the proposed GFA of 163.3sqm would result in a FSR of 0.65:1, representing a 8.9% (13.3sqm) variation to the required 0:6:1 (150sqm).

Whilst the proposal would still be non-compliant with FSR if calculated based on a lot size of 250sqm, the non-compliance would be reduced from 20.7% to 8.9%.

Nonetheless, refer to Clause 4.6 Exceptions to Development Standards of MLEP 2013 for a detailed assessment of this variation, which finds that the variation is supported, in this instance.

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

Description of non-compliance

Clause 4.1.4.1 Street Front Setbacks stipulates that proposed front setbacks must relate to the front building line of neighboring properties and the prevailing building lines in the immediate vicinity, or 6m where a pattern is not established. The proposed additions are behind the existing first floor setback of 7.8m, which itself is behind the existing ground floor building setback, and consistent with the prevailing street setbacks.

Clause 4.1.4.2 Side Setbacks and Secondary Street Frontages stipulates that the setbacks between any part of a building and the side boundary must not be less than one third of the wall height. The southern elevation of the proposal has a nil setback to the shared boundary with 11 Crescent Street, which is acceptable and appropriate, given the development is a semi-detached dwelling connected at this wall. On the northern elevation the dwelling requires a 2.6m side setback, based on a wall height of 7.8m. The setback along the northern elevation of the proposed first floor addition is 2.6m - 3.1m, compliant with the requirements of this control.

Clause 4.1.4.4 Rear Setbacks stipulates that the rear setback must be 8m. Additional information was requested during the assessment of this application in relation to this control, and in response a revised proposal was received which proposed a compliant 8m rear setback.

Overall, the proposal complies with the front, side and rear setbacks as stipulated by this Clause.

However, Clause 4.1.4.2 Side Setbacks and Secondary Street Frontages also requires that no new windows be located within 3m of side boundaries. The proposal includes four (4) new windows within this setback area. It should be noted that these windows are designed with consideration of privacy. They face (with approximately 8m distance) the access stairs and front doors of units within the existing residential flat building to the north (15 Crescent Street). The balconies connecting front doors are primarily for access, entirely visible from the street, and not used as areas of private open space for the units. As such, it is not considered to be a sensitive area in terms of privacy.

Merit consideration

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

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

Comment:

The streetscape is not considered to be adversely impacted. Front, side and rear setbacks are compliant. Windows on the side elevations do not compromise the desired streetscape and the built form is similar to that of surrounding development.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The revised proposal is considered to meet the requirements of relevant clauses of the MDCP relating to amenity. The development is not considered to create unreasonable overshadowing on public or private spaces, or to unreasonably impact views from or to public or private spaces. The proposal is also considered to maintain the existing streetscape characteristic and not to detrimentally impact on traffic conditions or the privacy of surrounding dwellings.

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

Comment:

The proposed development is not expected to result in any unreasonable amenity impacts on surrounding properties and has demonstrated it meets the underlying objectives of the control. As such, flexibility is warranted, in this instance, particularly considering setbacks are fully compliant, and non-compliance only arise from windows in proximity to side boundaries, which have been designed considering privacy.

Objective 4) To enhance and maintain natural features by:

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

Comment:

Refer to the section of this report on MDCP Clause 4.1.5 Open Space and Landscaping for comments on landscaped area and landscaping. In summary, whilst the site as existing is non-compliant with the provision of landscaped area, this is an existing feature. The proposed works are within the existing building footprint, primarily consisting of first floor alterations and additions. The works do not alter the level of total open space or landscaped area provided on the subject site.

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

Comment:

The site is not classified as bush fire prone land.

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

4.1.5 Open Space and Landscaping

The subject site is located within Residential Open Space Area OS3, which requires at least 55% (124sqm) of the site to be open space. In addition, at least 35% (24.8sqm) of the proposed total open space is to be landscaped area. Furthermore, no more than 25% (17.7sqm) of total open space can be provided above ground level.

As existing the subject site is numerically deficient of the required total open space and landscaped area. The subject site exhibits 31.4% (70.8sqm) total open space, representing a variation of 42.9% (53.2sqm) to the control. Landscaped area makes up 30.6% (21.7sqm) of total open space, representing a variation 12.5% (3.1sqm) to the control. Total open space above ground level is compliant at less than 25% of total open space.

However, these are existing features of the site. The proposed works are within the existing building footprint, primarily consisting of first floor alterations and additions. The works do not alter the level of total open space or landscaped area provide on the subject site. Therefore, as no further variation to the control is sought, a detailed merit assessment is not required in this instance.

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

For dwelling houses, semi-detached dwellings and secondary dwellings, this Clause requires the provision of two (2) off-street parking spaces. The existing semi-detached dwelling provides no off-street parking spaces and this arrangement is not proposed to be changed.

Whilst the proposal is numerically non-compliant with Schedule 3 of the MDCP 2013 that requires two (2) off-street parking spaces, the provision of car parking on the subject site is not achievable within the existing context, nor expected in this instance considering the nature of the proposed alterations and additions.

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 \$ 594 is required for the provision of new and augmented public

infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 118,800.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

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

a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and

b) There are sufficient environmental planning grounds to justify the contravention.

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

Furthermore, Council is also 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 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and

b) There are sufficient environmental planning grounds to justify the contravention.

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

PLANNING CONCLUSION

This proposal, for alterations and additions to a semi-detached dwelling, has been referred to the Development Determination Panel (DDP) due to a request to vary the floor space ratio development standard, outlined in Clause 4.4 Floor Space Ratio of the Manly Local Environmental Plan 2013, by greater than 10%. The development also includes a request to vary the height of buildings development standard, outlined in Clause 4.3 Height of Buildings of the Manly Local Environmental Plan 2013, however, the variation requested is less than 10%.

The subject development application has been publicly exhibited 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.

Critical assessment issues included, among others, assessment of the proposed variations to the height of buildings and floor space ratio development standards, as well as minor proposed built form non-compliances with the following controls:

- Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
- Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

Overall, the development is a high quality design and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal is considered to be compatible with the height, bulk and scale of surrounding and nearby development, and has been designed to reduce the visual appearance of the alterations and additions.

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 and Clause 4.4 Floor Space Ratio development standards pursuant to clause 4.6 of the MLEP 2013 as the applicant's written requests have adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2023/0814 for Alterations and additions to a semi-detached dwelling on land at Lot 1 DP 528835, 13 Crescent Street, FAIRLIGHT, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA1003	1	Site Plan	Rapid Plans	3 October 2023
DA1007	1	Demolition Lower Ground Floor Plan	Rapid Plans	3 October 2023
DA1008	1	Demolition Ground Floor Plan	Rapid Plans	3 October 2023
DA1009	1	Demolition First Floor Plan	Rapid Plans	3 October 2023
DA2001	1	Lower Ground Floor	Rapid Plans	3 October 2023
DA2002	1	Ground Floor	Rapid Plans	3 October 2023
DA2003	1	First Floor	Rapid Plans	3 October 2023
DA2004	1	Roof	Rapid Plans	3 October 2023
DA3000	1	Section 1	Rapid Plans	3 October 2023
DA3001	1	Section 2	Rapid Plans	3 October 2023
DA4000	1	Elevations 1	Rapid Plans	3 October 2023
DA4001	1	Elevations 2	Rapid Plans	3 October 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate	A495180	Rapid Plans	26 April 2023
Waste Management Plan - 13 Crescent Street, Fairlight	-	-	-

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	30/06/2023 (on EDMS)

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

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

3. Prescribed Conditions

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

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

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

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

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

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

Reason: Legislative requirement.

4. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be

maintained in a safe and clean state until such time as new construction works commence.

- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the 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 \$594.00 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 \$118,800.00.

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. **Stormwater Drainage Disposal**

The stormwater drainage systems for the development are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.

All stormwater drainage systems must comply with the requirements of Council's Water Management for Development Policy. Any recommendations identified within a Geotechnical Report relevant to the development are to be incorporated into the design of the stormwater drainage system. Details demonstrating compliance from a qualified and practising Civil Engineer and where relevant a Geotechnical Engineer must be submitted to and approved by the Certifier prior to the issue of a Construction Certificate.

When the proposed discharge point for the development in this consent cannot strictly comply with the Water Management for Development Policy, the Applicant must apply to verify the proposed discharge point by gaining Council approval via a Stormwater Drainage Application. Council approval must be provided to the Certifier prior to the issue of a Construction Certificate when a Stormwater Drainage Application is required. The Stormwater Drainage Application form can be found on Council's website.

Compliance with this condition must not result in variations to the approved development or additional tree removal.

Reason: To ensure satisfactory management of stormwater.

8. **Protection of stone kerbs**

Care should be taken to ensure that the heritage listed stone kerbs in Crescent Street is not damaged as a result of construction works or vehicles.

Reason: To ensure the heritage listed kerbs are preserved.

9. **External materials and colours**

The proposed materials and colours should be complementary to the HCA, therefore, full details of external materials and colours are to be submitted to Council's Heritage Officer for approval, prior to the issue of a Construction Certificate.

Reason: To ensure the proposed materials and colours are complementary to the existing building and the adjoining semi.

10. **Compliance with Standards**

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

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

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

11. **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. **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.

13. **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.

14. **Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

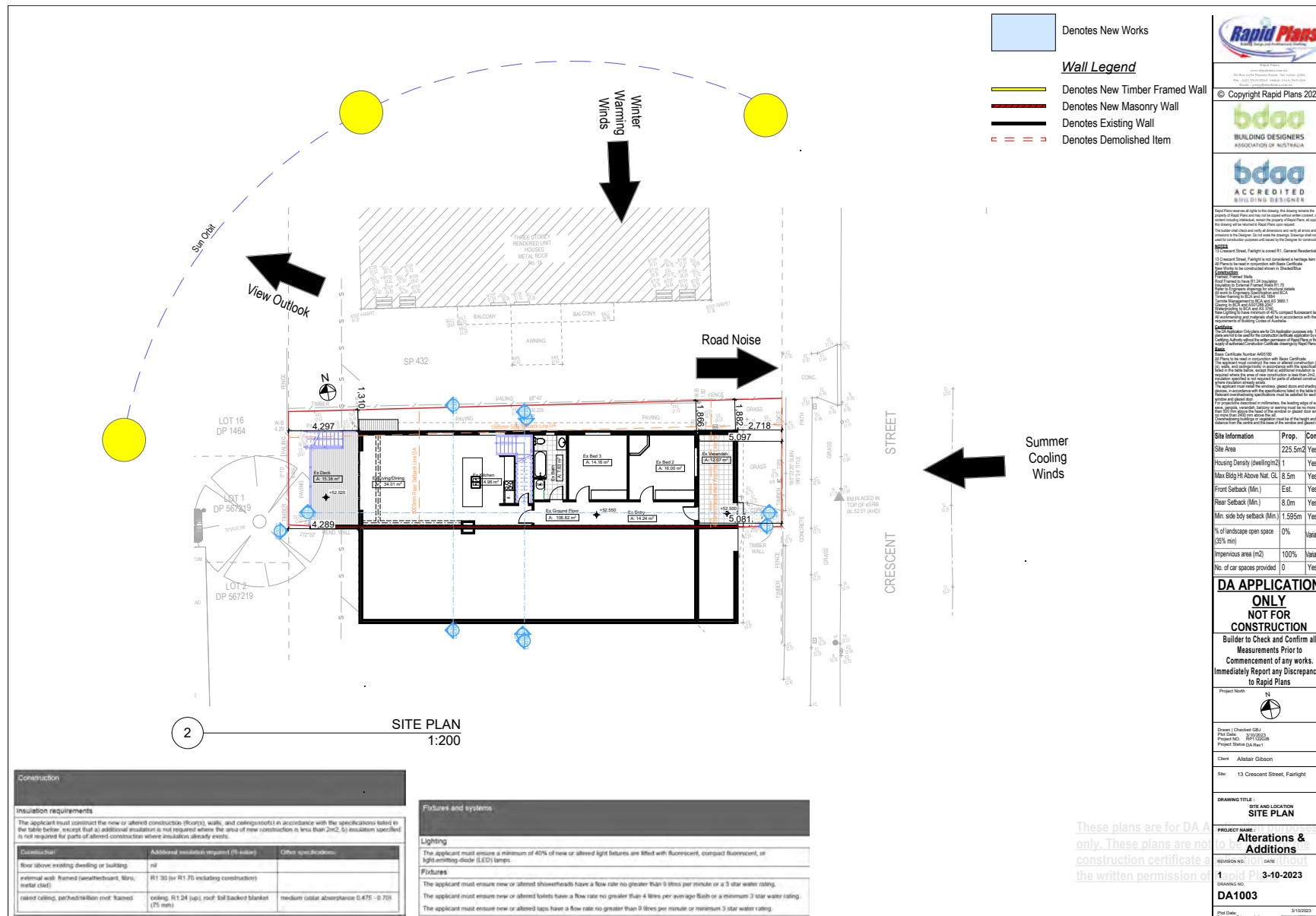
BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

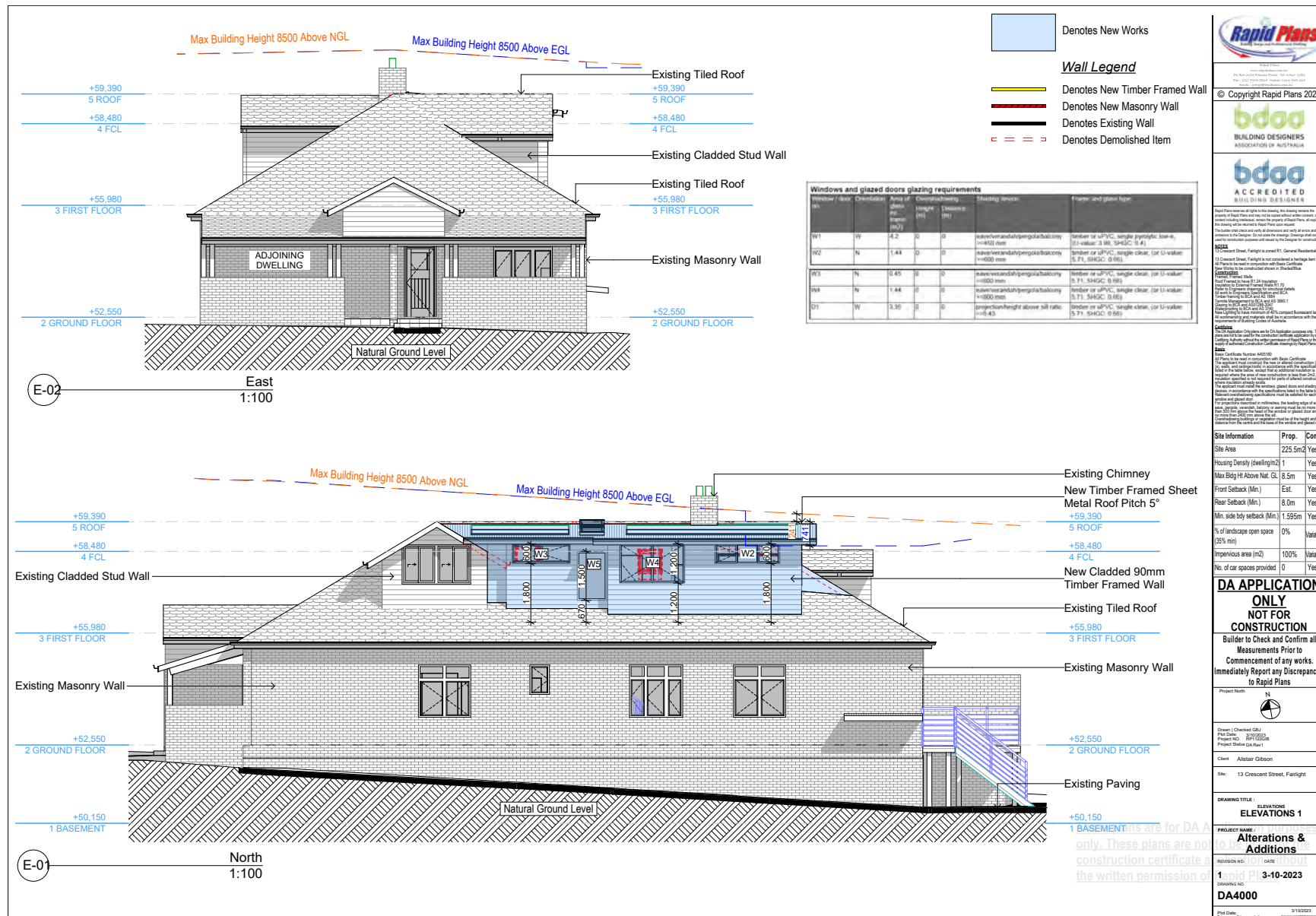
15. **House / Building Number**

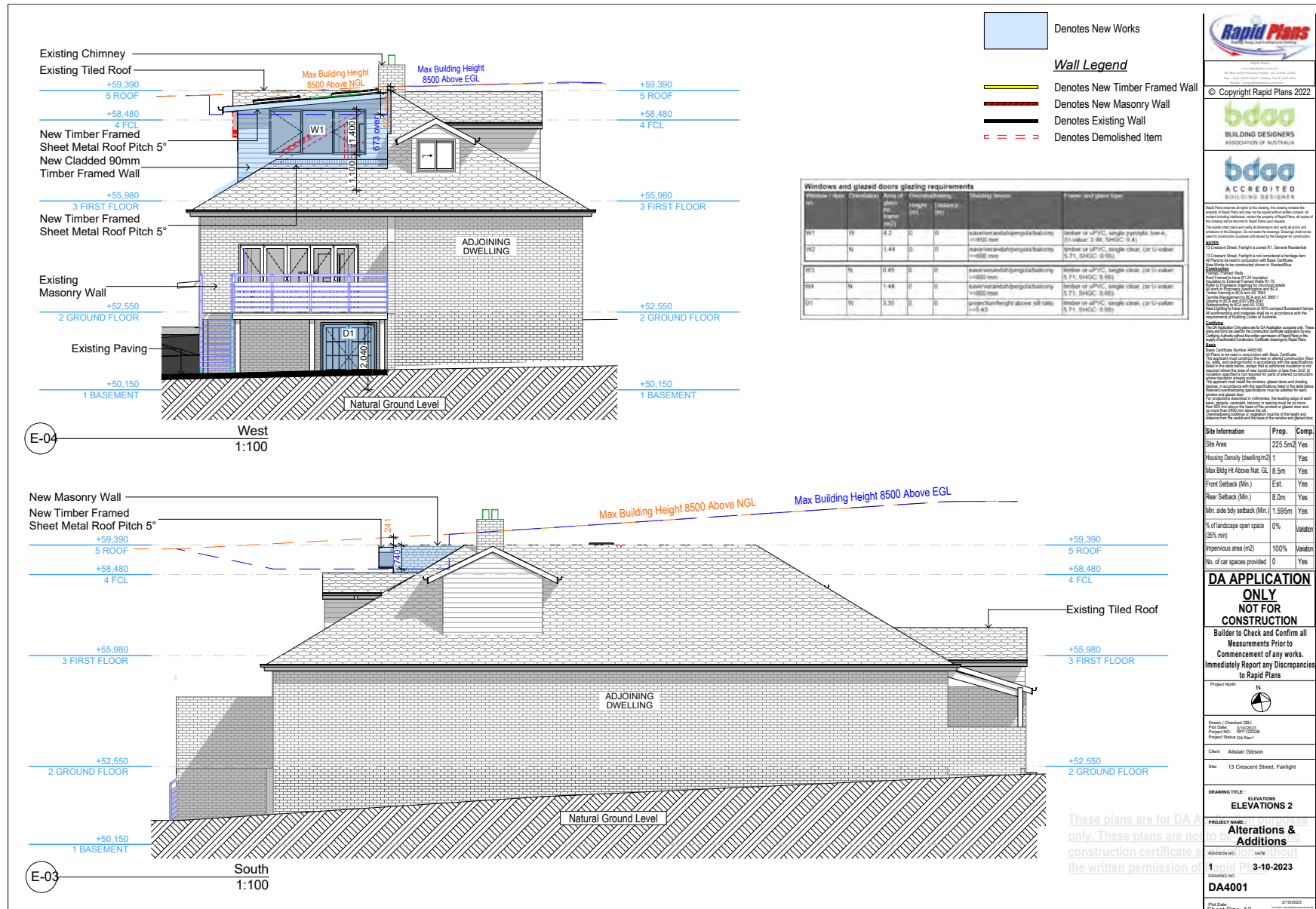
House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings.









**Clause 4.6 Variation (FSR)
To Development Application
For
13 Crescent Street,
Fairlight
NSW
For
Mr A Gibson**

RAPID PLANS

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1 INTRODUCTION

This report pertaining to Clause 4.6 Variation accompanies the Development Application for the proposed alterations and additions at 13 Crescent Street Fairlight.

1.1 Site

The residence is located on the western side of Crescent Street in the residential neighbourhood of Fairlight.

Site Address: No 13 Crescent Street, Fairlight

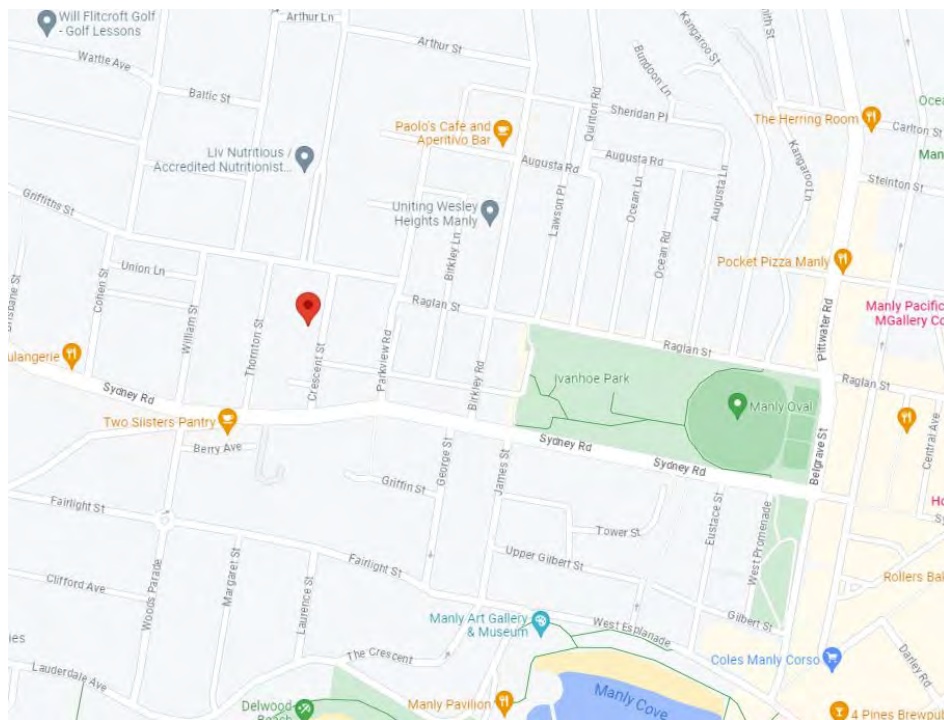


FIGURE 1: LOCATION PLAN 13 Crescent Street, Fairlight. ¹ Source Google Maps.

1.2 Local Authority

The local authority for this site is:
Northern Beaches Pittwater (Manly)
Civic Centre, 725 Pittwater Road,
Dee Why NSW 2099
DX 9118 Dee Why
Telephone: 9942 2111

¹ Location Map; <<https://www.google.com/maps/place/13+Crescent+St,+Fairlight+NSW+2094/@-33.7951105,151.2768516,17z/data=!4m6!3m5!1s0x6b12aba7c599dbdd:0x67881b2a9c64f9bd!8m2!3d-33.7949368!4d151.2781269!16s%2Fg%2F11c4x186z6?entry=ttu>>.

1.3 Environmental Planning Instrument that Applies to the Land

Manly Local Environment Plan 2013

1.4 Zoning of the land

Lot 1 DP.528835 known as 13 Crescent Street, Fairlight, has a Zoning of R1 General Residential. This property does not fall within a Conservation Area.

Permitted with consent

Attached dwellings; Bed and breakfast accommodation; Centre-based child care facilities; Community facilities; Dwelling houses; Group homes; Health consulting rooms; Home industries; Hostels; Oyster aquaculture; Places of public worship; Pond-based aquaculture; Respite day care centres; Roads; Semi-detached dwellings; Seniors housing; Tank-based aquaculture;

1.5 Objectives of the Zone

- To provide for the housing needs of the community within a low-density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of manly

Comment:

It is considered that the proposed development meets the objectives of the Zone R1 General Residential. This opinion is justified on the basis that this application provides for the owner's housing needs within the General Residential area that is consistent with surrounding properties elevated developments. The proposal allows currently unusable areas to be usable for the owners to assist in day to day living without adversely impacting the environmental aspects as privacy, views and sunlight is maintained and no substantial vegetation is proposed for removal. The works proposed will significantly improve the function and aesthetic quality of the site with the built form outcome complementing newer style properties along Crescent Street.

There are no statutory zoning or zone objectives that are an impediment to the granting of approval to the proposed development.

2 Clause 4.6 Variation to Development Application

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.*

2.1 *Development Standard Being Varied*

After reviewing Manly Council LEP 2013 we advised that a Clause 4.6 Exception to a Development Standard is required due to:

- This development is classified as a non-complying development due to an encroachment to the Floor Space Ratio (Manly LEP 2013 Part 4 4.4 Floor Space Ratio)

The favourable option for Council is a Development Application with a Clause 4.6 Variation for the structures to be considered for approval.

2.2 *Clause of the Development Standard listed in the Environmental Planning Instrument*

Manly LEP 2013 Part 4 4.4 Floor Space Ratio

2.3 *The objectives of this clause are as follows—*

Write a positive comment supporting our Clause 4.6 variation request for noncompliance with the floor space ratio required under the Manly Local environmental plan, Part 4.4.4. Ensure the comment addresses how the following objectives of the controls listed below.

- (a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,
- (b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,
- (c) to maintain an appropriate visual relationship between new development and the

existing character and landscape of the area,

(d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,

(e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

Comment:

This development proposal demonstrates a design that aligns with the key objectives of the controls. It is considered that the proposed development meets the objectives of the floor space ratio development standard. This opinion is justified on the basis that this application is compatible with surrounding properties in bulk & scale. The design provides consistency with existing and desired streetscape and character. The proposed variation request effectively ensures that the bulk and scale of development remain consistent with the existing and desired streetscape character. By taking into account the surrounding built environment and contextual factors, the design seamlessly integrates with the streetscape, preserving the visual harmony of the area.

While deviating from the prescribed FSR, the development proposal demonstrates a well-thought-out approach to control building density and bulk in relation to the site area. It specifically addresses the objective of preventing the obscuring of important landscape and building features. Through careful design considerations, the project minimizes any potential negative impact on significant features, thus enhancing the aesthetic value of the area.

The visual impacts are minimised as the floor space ratio is similar to the existing floor space ratio of the neighbouring properties, and all proposed works are located to the rear of the property over the existing ground floor area, with the front façade maintained. The proposed works are virtually invisible from Crescent Street and maintain the bulk and scale of the property from the public domain. With the existing location of the subject & adjacent dwellings enjoying an elevated position there is no adverse impact of view lines with privacy improved as well as the shadow cast from the proposed works having little impact on surrounding properties.

The proposed development maintains an appropriate visual relationship with the existing character and landscape of the area. By taking into account the unique

characteristics of the locality, the design ensures a seamless integration that respects and enhances the visual qualities of the surrounding environment. This approach aligns with the objective of preserving the area's distinct character and landscape.

Despite the requested variation in FSR, the design and development proposal prioritize the minimization of adverse environmental impacts on the use and enjoyment of adjoining land and the public domain. With the proposed works to the rear of the existing façade the proposed works have little affect on the existing streetscape and façade. Through sustainable design practices, the project mitigates potential negative effects on the environment, thus ensuring a harmonious coexistence with the surrounding area.

This Clause 4.6 variation request strongly supports the objective of providing for the viability of future development and affordable housing by encouraging the development, expansion, and diversity of residential and business activities. By accommodating the growth and diversification of development, the proposed development directly contributes to economic growth, through the retention of local building services, and the creation of employment opportunities in local centres. This aspect ensures a thriving and sustainable economic environment for the community.

2.4 Numeric value of the development standard in the environmental planning instrument

MLEP2011 FSR 0.6:1

2.5 Proposed numeric value of the development standard in your development application

Proposed FSR = 0.72:1 (Allowable 132.78m² / Proposed 163.13m²)

2.6 Percentage variation between the proposal and the environmental planning instrument

Proposed FSR = 22.8%

Clause 4.6 Variation To Development Application 13 Crescent Street, Fairlight NSW

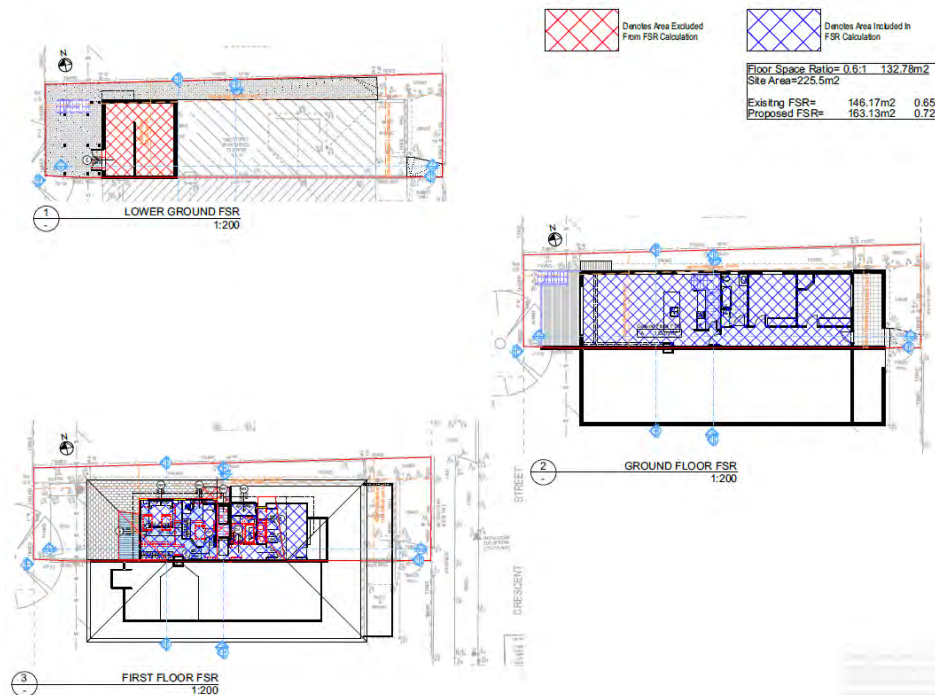


FIGURE 2: FSR PLAN 13 Crescent Street Fairlight. Source Rapid Plans.

2.7 How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

The variation is considered moderate in comparison to other developments in the local area, with many large-scale existing dwellings in the immediate vicinity in particular the unit dwelling direct adjacent to the northern boundary. This application is in keeping with a general residential environment desired by Council in this area, as well as the objectives of the zone. The development has no negative consequence of significance as a result of this minor noncompliance. Furthermore, it meets the objectives of the development standard, and therefore strict compliance with the development standard would be unreasonable and unnecessary.

In this circumstance, it is unreasonable and unnecessary to strictly comply with the FSR standard given that the resulting development will be absent of any negative environmental or planning outcomes. The proposal would be indiscernible to a development that strictly complied with the numerical control. For the reasons stated above, it is argued that a variation be supported as it ultimately results in an

improved planning outcome for the owners and maintained streetscape and general locality along Crescent Street.

- *Streetscape* – The visual quality of the streetscape is to be maintained with the alterations to the rear of the existing façade, with the bulk in keeping with the existing and adjacent properties with the proposed works to the rear of the property improving the site, and to complement the existing built form along Crescent Street. The FSR encroachment is minor as the works are to the rear, with the addition to the dwelling to complement the surrounding designs & present a dwelling that is consistent front to back. The proposed works do not detract from the streetscape along Crescent Street as they are located to the rear. The proposed additions provide a generally consistent pattern of development with regard to adjoining building setbacks, and as such, the proposal will not result in any visually prominent element that will result in an unreasonable impact on the streetscape & is not out of character for the neighbourhood. These characteristics for the building conform to the R1 general residential requirements for the Manly area.
- *Bulk & Scale* is maintained for the area. Although the bulk & scale of the building is slightly increased, the overall size & bulk in relation to the surrounding neighbourhood is sympathetic throughout the development as shown by the existing development on the adjacent properties below

Clause 4.6 Variation To Development Application 13 Crescent Street, Fairlight NSW



FIGURE 3: Street View: 10 Crescent Street Fairlight. Source Google Maps.



FIGURE 4: Street View: 15 Crescent Street Fairlight. Source Google Maps.

There is no adverse visual impact with surrounding developments to maintain their existing visual amenity. The flat style roof has been added to the design to reduce the bulk & scale of the roof line from the existing raked pitched roof to the dwelling. This is to prevent the design from visually impacting surrounding properties as the roof height is lower than the existing roof at its highest point, thus making the proposed addition almost invisible from the public domain.

It is in our opinion that approval of the proposed upper floor would be reasonable with the flat roof pitch design allowing for increased amenity and longevity for the development, with the design in keeping with other properties along Crescent Street. The proposal is a design option that supports a preferred planning outcome of a modern design, that is prevalent in the Fairlight area, as well as complementing the existing dwelling & the surrounding neighbourhood.

In addition, the addition is justified as the addition is barely visible from the street as it is set back well behind and below the existing roof line & visually maintains the bulk of the upper portion of the dwelling without adversely affecting the streetscape.

- **Openness** - A sense of openness is maintained as the proposed design to the upper portion of the dwelling allows the low levels to create flow between the internal & open space areas for the owners with all elements of the proposal compliant the height limit, continuing to allow for a sense of openness to support the desired future character of the Manly area. The openness to the front of the property is maintained with the façade and landscaped area & access maintained to assist in adequate usable outdoor recreation space & water infiltration.
- **Public & Private Views** - The view lines are maintained for the subject & surrounding dwellings with minimal impact in the vicinity of the building works.
- **Site Access & Circulation** is maintained, and it is anticipated that the proposed development will have no detrimental impact on traffic flow.
- **Planting** – The proposed alterations have no affect to the landscaped open space on site. All works occur behind the existing front building line. It will have no significant impacts on the streetscape. There has been generous amount of area maintained and proposed for the provision of planting in the front & rear areas of the property. The proposal enhances the amenity of the

site by maintaining a usable garden space that softens the visual amenity of the property. The proposed works to the rear of the property are in keeping with the adjacent property. The existing vegetation softens the streetscape & allows the development to blend in with the existing environment along Crescent Street.

2.8 How would strict compliance hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act?

The proposal extends the existing built form of the subject property with well-designed additions improving on the ageing dwelling & assists in providing cost effective housing solutions for a growing family while maintaining the landscaping onsite. The proposed works add to the already renovated & rebuilt dwellings along Crescent Street, and as such strict compliance in this regard would limit the objects being fully attained. The proposed works provide a more efficient and orderly development on the land that is of high-quality architectural design which maximises the sites development potential along with providing appropriate housing stock within the locality.

2.9 Is the development standard a performance-based control?

The objectives of the development standard provide the controls to allow a performance-based solution. For the reasons outlined herein, it is demonstrated the proposal meets the objectives of the development standard, therefore Council should consider “compliance to the standard unreasonable in the circumstances of the development”.

2.10 Would strict compliance with the standard be unreasonable or unnecessary?

Yes, please refer to answer in 2.7, 2.8 and 2.9 preceding.

2.11 Are there sufficient environmental planning grounds to justify contravening the development standard?

Section 4.6 enables a development standard within an LEP to be varied, providing sufficient and compelling arguments based on sound planning rationale and

legislation are put forward to support the variation.

The following environmental planning grounds justify contravening the development standard.

- The proposal provides a more environmentally friendly dwelling.
- The proposal utilizes existing services.
- The proposal provides improved housing in a low-density environment.
- The proposal provides increased useability for the dwelling.
- The proposal provided increased longevity for the dwelling.
- The proposal provides for increased sustainability by reducing the need for a move or a new dwelling to accommodate the occupants.

The visual impacts are minimised as the floor space ratio is similar to the existing floor space ratio and all proposed works are located to the rear of the property over the existing ground floor area and with the front façade maintained, the proposed works are virtually invisible from Crescent Street and maintain the bulk and scale of the property from the public domain. With the existing location of the subject & adjacent dwellings enjoying an elevated position there is no adverse impact of view lines with privacy improved as well as the shadow cast from the proposed works having little impact on surrounding properties.

The variation to the maximum FSR requirements is, in our opinion, acceptable and there are appropriate planning grounds in support of the non-compliance.

CONCLUSION

2.12 Summary

The resulting development has been designed to enhance the existing residential building by improving the amenity for the residents while maintaining, where possible, the conditions set out by Manly Local Environment Plan 2011. The proposed works included in this report are, in our opinion, reasonable in relation to the existing built works, & do not adversely impact the surrounding properties, whilst justifying the environmental planning grounds for Manly Council. We consider that the proposal will impose minimal impact and improves the streetscape & character of the neighbourhood & request that council support the Clause 4.6 Variation of the Development Application.

ITEM 3.4**DA2023/0278 - 3 PAVILION STREET QUEENSCLIFF -
ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
INCLUDING CONSTRUCTION OF A SWIMMING POOL****REPORTING MANAGER**

Rod Piggott

TRIM FILE REF

2023/670095

ATTACHMENTS

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

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of WLEP 2011 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2023/0278 for alterations and additions to a dwelling house including construction of a swimming pool on land at Lot 1 DP 949656, 3 Pavilion Street QUEENSCLIFF, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0278
Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 1 DP 949656, 3 Pavilion Street QUEENSCLIFF NSW 2096
Proposed Development:	Alterations and additions to a dwelling house including construction of a swimming pool
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Fiona Turner
Applicant:	Fiona Turner
Application Lodged:	21/03/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	27/03/2023 to 10/04/2023
Advertised:	Not Advertised
Submissions Received:	4
Clause 4.6 Variation:	4.3 Height of buildings: 13.53%
Recommendation:	Approval
Estimated Cost of Works:	\$ 2,135,836.75

EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) due to the variation to the height of 13.53%.

Concerns raised in the objections relate to geotechnical stability with reference to the cliff location and a nearby site of Aboriginal heritage significance, and loss of light due to rear extensions. The plans originally submitted with the application included works beyond the coastal cliffs setback line and

beyond the rear building line of the existing dwelling house, including extension of the existing terraces, and construction of a new swimming pool. The plans were amended to remove these works (though the plans still include demolition of the existing swimming pool in the rear and minor extensions within the existing built-upon footprint) in response to the concerns raised. The plans are supported by an updated geotechnical report demonstrating acceptable risk with the associated works.

The critical assessment issues related to non-compliance with height of buildings, wall heights, setbacks, and side boundary envelope controls. The non-compliant elements are acceptable on merit as detailed throughout this report.

The 4.6 request for the non-compliance with height standard arises due to existing excavation, resulting in an existing ground level lower than the natural ground, and due to the existing building height. The proposal results in a 13.53% variation, reaching a maximum of 9.6 metres in height. Based on extrapolated natural ground levels, the height would be measured at a maximum of approximately 8.3 metres, which is compliant with the development standard.

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

PROPOSED DEVELOPMENT IN DETAIL

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

- Lower ground alterations, including extension to the south-west (front) for the purpose of a car hoist, lift, kitchenette, living and dining room, laundry, gym, toilet, lift and stairs;
- Ground level reconfiguration and minor additions;
- First floor reconfiguration and minor additions;
- Construction of a roof terrace and garden; and
- Removal of the existing pool in the rear yard.

The plans originally submitted with the application included works beyond the coastal cliffs setback line and beyond the rear building line of the existing dwelling house, including extension of the existing terraces, and construction of a new swimming pool. The plans were amended to remove these works (though the plans still include demolition of the existing swimming pool in the rear and minor extensions within the existing built-upon footprint) in response to concerns raised about cliff stability and potential damage to an item Aboriginal heritage significance. The plans are supported by an updated geotechnical report demonstrating acceptable risk with the associated works. In accordance with the Community Participation Plan, the amended plans did not require public notification as they result in a lesser environmental impact than the original plans.

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 - B5 Side Boundary Setbacks
 Warringah Development Control Plan - B7 Front Boundary Setbacks
 Warringah Development Control Plan - D8 Privacy

SITE DESCRIPTION

Property Description:	Lot 1 DP 949656 , 3 Pavilion Street QUEENSCLIFF NSW 2096
Detailed Site Description:	The subject site consists of one allotment located on the eastern side of Pavilion Street, Queenscliff. The site is irregular in shape with a frontage of 18.29 metres along Pavilion Street and a maximum depth of 45.72 metres. The site has a surveyed area of 802.9m². The site is located within the R2 Low Density Residential zone and accommodates a three-storey detached dwelling house with swimming pool. The site is relatively level within the front yard, then steeply slopes down approximately 28 metres to the east (rear), by way of a cliff. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by multi-storey dwelling houses and residential flat buildings. To the east of the site is the ocean (Tasman Sea).

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:

- DA2010/0682 for alterations and additions to a dwelling house and construction of a swimming pool and fencing was approved by Council staff on 5 November 2010.
- Mod2012/0182 for modification of Development Consent No. DA2010/0682 was approved by Council staff on 13 November 2012.
- DA2017/0726 for subdivision of one lot into two and alterations and additions to a dwelling house to create two semi-detached dwellings was withdrawn by the Applicant on 6 November 2017.

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	Warringah Development Control Plan applies to this proposal.

Section 4.15 Matters for Consideration	Comments
control plan	
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)	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. <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. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information with regard to the geotechnical assessment and treatment of the site with reference to the cliff was requested and adequately provided by the Applicant on 14 August 2023. <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. <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. <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 clause is not relevant to this application. <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.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	No submissions have been received in relation to this application.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 27/03/2023 to 10/04/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 4 submission/s from:

Name:	Address:
Mr Robert John Callaghan Pamela Anne Callaghan	10 / 41 Ocean View Road FRESHWATER NSW 2096
Mr Robert Douglas Winton	PO Box 768 FRESHWATER NSW 2096
Mr Michael James Dover	112 Crescent Road NEWPORT NSW 2106
Ms Elyane Joy Messara	9 Pavilion Street QUEENSCLIFF NSW 2096

The following issues were raised in the submissions:

- Concern about rock/cliff stability in consideration of the method of excavation used, the works beyond the coastal cliffs setback, and the nearby site of Aboriginal heritage significance.
- Concern that the excavation will encounter groundwater.
- Loss of light to 1/1 Pavilion Street due to rear extension works.

The above issues are addressed as follows:

Rock/Cliff Stability

Comment:

The amended plans received on 14 August 2023 delete the works in the rear coastal cliffs setback area of the site. The proposed development will not extend any further seaward beyond the existing built-upon footprint. The proposal still includes removal of the existing pool, though does not propose a new pool. The amended plans are supported by an updated geotechnical report, demonstrating acceptably low risk in the context of the site. The amended plans have been reviewed by Council's Development Engineer, Coast & Catchments Team and Heritage Advisor, as well as the Aboriginal Heritage Office. All referral bodies are supportive of the amended development, subject to conditions of consent, which have been included in the recommendation of this report.

Groundwater

Comment:

The submitted geotechnical report confirms that the groundwater table will not be intersected by the lower ground floor excavation.

Rear Extension Works

Comment:

The amended plans received on 14 August 2023 delete the majority of the works in the rear portion of the site. The amendments to the rear include columns to the lower ground floor southern terrace and northern Sunroom/Bed 5, filling in of the central terrace area at the ground floor, and a 400 millimetre eastern extension of the existing terrace adjoining the Study at the ground floor. However, the proposed development does not extend any further seaward beyond the existing built-upon footprint.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The proposal is supported with regard to landscape issues. The application is assessed by Landscape Referral against Warringah Local Environmental Plan 2011 and the following Warringah Development Control Plan 2011 controls (but not limited to): • D1 Landscaped Open Space and Bushland Setting • E1 Preservation of Trees or Bushland Vegetation Some area of the front setback landscaped open space will be above the laundry/cellar below which therefore cannot be included in the landscaped open space calculations as the required soil depth is not met (as shown on the sections). The rear setback of the property is dominated by the coastal cliffs which can be included in the landscaped open space calculations, and as such with the inclusion of the proposed compliant landscaped open space in the front setback no concerns are raised with the total landscaped open space. Should the development application be approved, all neighbouring trees and vegetation shall be protected during works. A Landscape Plan shall be submitted prior to issuing a Construction Certificate in accordance with the requirements outlined in the conditions of consent. All on slab landscaping shall meet Council's minimum soil depth requirements.
NECC (Bushland and Biodiversity)	The proposal seeks approval for alterations and additions to a dwelling house including construction of a swimming pool.

Internal Referral Body	Comments
	The comments in this referral relate to the following applicable biodiversity controls: • Warringah DCP Clause E2 Prescribed Vegetation • Warringah DCP Clause E4 Wildlife Corridor • Warringah DCP Clause E5 Native Vegetation • Warringah DCP Clause E6 Retaining unique environmental features The site on which the proposed development would take place is highly disturbed and it is unlikely that native flora and fauna would be impacted. However, conditions will apply to ensure landscaping is compliant with WDCP Controls.
NECC (Coast and Catchments)	Original Comments (31 May 2023): The DA has been assessed in consideration of the: • Plans, reports and other documents submitted in support of the application; • Coastal Management Act 2016; • State Environmental Planning Policy (Resilience and Hazards) 2021; and • the coastal relevant provisions of Warringah LEP 2011 and Warringah DCP 2011. <u>Coastal Management Act 2016</u> 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 generally consistent with the objects, as set out under Part 1 Section 3 of the Coastal Management Act 2016. <u>State Environmental Planning Policy (Resilience and Hazards) 2021</u> The proposed development site has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience and Hazards) 2021 (RH SEPP). Hence, Divisions 3, 4 and 5 of the RH SEPP apply to this DA. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by BBF Town Planners, dated March 2023, the DA satisfies requirements under Divisions 3, 4 and 5 of the RH SEPP. As such, it is considered that the application does comply with the provisions of State Environmental Planning Policy (Resilience and Hazards) 2021, subject to conditions. <u>Warringah LEP 2011 and Warringah DCP 2011</u> The subject site is included in part as Area C (slopes greater than 25 degrees) on the Warringah Landslip Risk Map in Warringah LEP 2011.

Internal Referral Body	Comments		
	Part E, Section E10 Landslip Risk of Warringah DCP 2011 requires that "iii) For land identified as being in Area C or Area E: A geotechnical report, prepared by a suitably qualified and experienced geotechnical engineer/ engineering geologist, must be submitted with the development application. Also, a hydrological assessment of stormwater discharge and subsurface flow conditions, prepared by a suitably qualified geotechnical/ hydrological engineer, must be submitted with the development application. iv) When a geotechnical report is required to be submitted, (determined in accordance with i) to iii) above), the report must include a risk assessment of landslip in relation to both property and life. The risk assessment must have regard to any guidelines published by the Australian Geomechanics Society." A Preliminary Geotechnical Assessment by GK Geotechnics, dated 10 February 2022 has been submitted in support of the DA for a concept stage development only. The Report recommends that further investigations are required to be undertaken to assess the stability of problematic parts of the site. Further, the Geotechnical Assessment does not incorporate the Coastal Assessment Report by Royal HaskoningDHV, dated 1 March 2023, nor address its findings. A hydrological assessment of stormwater discharge and subsurface flow conditions must also be included. Until such time that the recommended further geotechnical assessment is undertaken and resubmitted as a Geotechnical Report in accordance with the requirements of Section E10 Landslip Risk, Council is unable to complete the assessment of this DA. Updated Comments (5 September 2023) An updated Geotechnical Assessment report by GK Geotechnics, dated 11 August 2023, has been submitted in support of the subject development proposal. The Assessment assigns risk levels to both life and property and recommends measures to reduce risks to appropriate levels in accordance with Australian Geomechanics Society guidelines and best practice engineering. As such the proposed development is considered to satisfy the requirements of the E10 Landslip Risk control subject to conditions.		
NECC (Development Engineering)	The proposed development is in Region 2. The site is a low level property and an existing system will be utilised for stormwater disposal. A geotechnical report has been provided. Vehicle crossing construction is proposed. I have no objections to the proposed development		
Parks, reserves, beaches, foreshore	The property adjoins Harbord Headland Reserve downslope. All development works must ensure that surface sediment runoff and/or erosion is controlled, managed and contained within the site boundaries.		
Strategic and Place Planning (Heritage Officer)	<table><tr><td>HERITAGE COMMENTS</td></tr><tr><td>Discussion of reason for referral</td></tr></table>	HERITAGE COMMENTS	Discussion of reason for referral
HERITAGE COMMENTS			
Discussion of reason for referral			

Internal Referral Body	Comments		
	This application has been referred as the site adjoins a heritage conservation area, being Area C13 - Coastal Cliffs, southern side of Freshwater Beach to Queenscliff , listed in Schedule 5 of Warringah LEP 2011. While this conservation area is mapped only outside private properties, the heritage conservation area listing is clearly intended to apply to the extent of the coastal cliffs in this area, whether on private or public land.		
	Details of heritage items affected		
	Details of this heritage item as contained within the heritage inventory, are: C13 - Coastal Cliffs, southern side of Freshwater Beach to Queenscliff		
	<u>Statement of Significance</u> The Queenscliff-Freshwater headland cliffs have existence value as a major coastline promontory, protecting adjacent beaches and estuarine lagoon and providing dramatic landforms and viewing points. The Freshwater View Reserve on its northern face is a former landscaped garden with heritage significance. The headland's associated rock platform is host to an ocean swimming bath on the Queenscliff side, and these combined with the cliffs' high aesthetic qualities have a high level of community esteem.		
	<u>Physical Description</u> The Queenscliff-Freshwater Cliffs are high, steep, and much sheared, with substantial talus deposits on the rock platform at their base. They are higher and steeper on their northern side, where they abut deep water, and lower and more benched on the Queenscliff side. This southern face of the headland has borne the brunt of the most severe storms, which usually come from the south-east. The ridgetop contains very little of the original heath cover, as the greater part of the ridge/crest has been built upon. At the base of the southern face of the headland is the outlet to the Manly Lagoon, separating it from North Steyne beach. A tunnel was constructed through the headland in 1908 making easy access between its northern and southern faces. A section of the northern (Freshwater) face of the headland was developed in the period 1910-1920 by Arthur Costin as an elaborate terraced garden and following acquisition by Council, has recently been re-landscaped to form Freshwater View Reserve. Most of the land on the top of the headland has been subdivided into lots of varying sizes, and many homes and apartment blocks have been built close to the cliff edge. This is well illustrated by the aerial photographs at the end of this inventory.		
	Other relevant heritage listings		
	SEPP (Biodiversity and Conservation) 2021	No	Comment if applicable
Australian Heritage Register	No		

Internal Referral Body	Comments
	NSW State Heritage Register No
	National Trust of Aust (NSW) Register No
	RAIA Register of 20th Century Buildings of Significance NO
	Other No
	Consideration of Application
	Amended Plans and Geotechnical Assessment - 14 August 2023 This application is for alterations and additions to an existing multi storey dwelling. Original plans included the construction of a new pool at the existing cliff edge, but this element has been deleted on the amended plans. A comprehensive geotechnical assessment by JKGeotechnics, dated 11 August 2023 was also submitted. It is noted that the sheer cliff in this location, commences on the property itself. Other works are largely confined to the Pavilion Street frontage, however involve excavation under the existing house. It is considered that these proposed works will not have an adverse visual impact upon the Coastal Cliffs heritage conservation area. Subject to all recommendations of the geotechnical assessment being adopted (to ensure cliff stability during construction), it is considered that this application will not have an impact upon the heritage significance of the Coastal Cliffs. The potential impact upon an Aboriginal heritage site located in a cave under the cliff will be assessed by the Aboriginal Heritage Office. Therefore, no objection is raised on heritage grounds and no conditions required. <u>Consider against the provisions of CL5.10 of WLEP 2011:</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? N/A Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? N/A
External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	Original Referral Comments:

External Referral Body	Comments
	An Aboriginal site that is in the process of being registered sits below the rock ledge at the rear of 3 Pavilion Road, Queenscliff. It is understood that there are Geotech concerns with the proposal and potential impacts to the cliff below which the Aboriginal site is situated. The Aboriginal Heritage Office (AHO) would like further advice from Council or specialists with structural engineering expertise in relation to potential risks to the shelter and whether any further Aboriginal heritage assessment is required. If there is significant risk that the proposed development may cause direct or indirect impact to the overhang, then the site may need to be assessed by an independent qualified Aboriginal heritage professional, including consideration for subsurface archaeological testing. If the site would be impacted, then an Aboriginal Heritage Impact Permit (AHIP) would be required from Heritage NSW and the DA would become an Integrated Development under the EP&A Act. If it is considered that there would be no impact to the overhang and no impacts, then there would be no further Aboriginal heritage issues. Updated Referral Comments - Amended Plans: There are known Aboriginal sites in the area and one site is recorded on the current lot. An inspection of the property by the Aboriginal Heritage Office (23 November 2022) confirmed the location of the recorded site. No other Aboriginal sites or areas of potential were identified in the proposed development area. If the area around the recorded site is not impacted then the Aboriginal Heritage Office would not foresee any further Aboriginal heritage issues on the current proposal. 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. <u>Assessing Officer's Comment:</u> The amended plans received on 14 August 2023 demonstrate deletion of all proposed works beyond the existing rear building line, with the exception of demolition of the existing swimming pool. The amended plans and supporting geotechnical assessment have been reviewed by Council's Development Engineer and Heritage Advisor (in addition to the Aboriginal Heritage Office), who are supportive of the proposed works and no longer raise concern with respect to protection of the site of Aboriginal heritage significance. A condition of consent has been included in the recommendation with respect to uncovering of any items of significance during works.

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. A483181_02 dated 7 February 2023). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

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

Comment:

The proposed development is supported by a geotechnical assessment report prepared by a suitably qualified geotechnical engineer, and a coastal report prepared by a suitably qualified coastal engineer. The recommendations of these reports are included in the recommended conditions of consent for this application. These reports demonstrate that the proposed works will not result in adverse impact to the matters at (1) (a) and (b). The proposed development is fully on private land and will not impact upon the matters at (1) (c), (d), (e) and (g). The proposed development has been reviewed by the Aboriginal Heritage Office, who is supportive of the proposed development, subject to conditions of consent. The proposed development is therefore satisfactory with respect to (1) (f).

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

Comment:

Given the above, the proposed development is demonstrably designed, sited and will be managed to avoid an adverse impact to the matters at (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 platform for members of the public, including persons with a disability,*
 - ii) *overshadowing, wind funnelling and the loss of views from public places to*
 - iv) *foreshores,*
 - v) *the visual amenity and scenic qualities of the coast, including coastal headlands,*

*Aboriginal cultural heritage, practices and places,
cultural and built environment heritage, and*

- b) *is satisfied that:*
- i) *the development is designed, sited and will be managed to avoid an*
 - ii) *adverse impact referred to in paragraph (a), or*
 - iii) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or if that impact cannot be minimised—the development will be managed to mitigate that impact, and*
- c) *has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*

Comment:

The proposed development is fully located on private land, so does not cause adverse impact upon public foreshore, beach, headland or rock platform land. The proposed development does not cause adverse impact on persons with a disability as it does not alter public access. The proposed development is supported by shadow diagrams that demonstrate acceptable overshadowing impact. The proposed development is designed such that it does not increase wind funnelling or unreasonably impact upon view sharing to, from, or between public or private land. The proposed development has been reviewed by the Aboriginal Heritage Office, who is supportive of the proposed development, subject to conditions of consent. In this way, the proposed development is demonstrably designed, sited and will be managed to avoid adverse impact. The bulk and scale of the proposed development has been considered throughout this assessment.

Division 5 General

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

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

Comment:

The proposed development is demonstrably designed and sited so as not to cause increased risk of coastal hazard on the subject site or surrounding land.

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

Chapter 4 – Remediation of Land

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

Warringah Local Environmental Plan 2011

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

zone objectives of the LEP?	Yes
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Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.65m	13.53%	No

Compliance Assessment

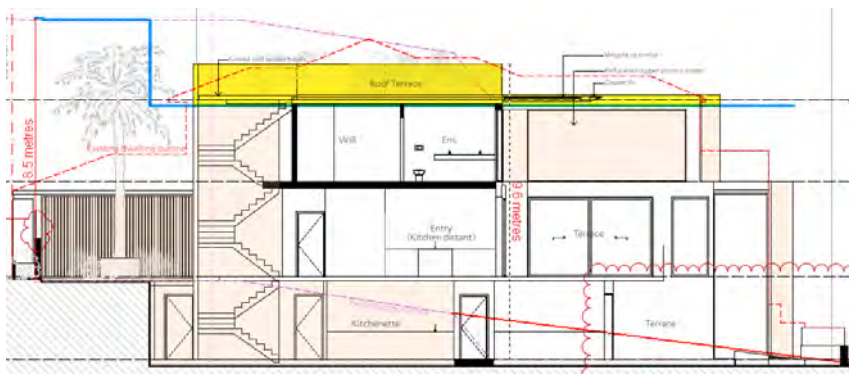
Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.6m
Percentage variation to requirement:	13.53%



Above: The extent of the building height non-compliance, marked in yellow.

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 Height of Buildings has taken into

consideration the 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 is not expressly excluded from the operation of this clause.

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

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

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

(a) *the consent authority is satisfied that:*

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

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

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

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

Comment:

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

standard is unreasonable or unnecessary in the circumstances of this case as required by Clause 4.6(3)(a).

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

Comment:

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

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

Section 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The Applicant's written request argues, in part:

"The proposal satisfies not only the relevant objectives of clause 4.3 for the HoB development standard but that the proposal also complies with the general aims of the WLEP 2011 and the objectives of zone R2, in which the site is located.

The application of the development standard is unnecessary because the proposal meets all the relevant objectives in the LEP in spite of the breach of the height of building by a maximum of 1035mm. If all the relevant objectives are met, the numerical development standard has no further work to do and is thus unnecessary. Additionally, as all the relevant objectives are met, it is also unreasonable to apply the development standard in this case, as the impact is negligible and arises only as a consequence of the slope along and across the site. Compliance with the relevant standard is, therefore, both unreasonable and unnecessary for the purposes of clause 4.6(3)(a) of the LEP.

As to whether or not compliance is unreasonable, the development is well below the required height from street level, and all views over the site are preserved with building height less than the of the existing dwelling.

The bulk and scale of the proposal are in keeping with the future character of the area to the extent that the planning controls reflect such character. Considering that the bulk and scale are largely consistent with dwellings in its vicinity, the proposal presents an acceptable design and demonstrates compliance with the first test under Wehbe...

...

One element of the breach of the height control results from the provision of a green roof. The proposal accords with planning changes underway at Northern Beaches Council, where the reduction of heat island effects has become an emerging concern.

Part of the breach arises from an existing, excavated lower ground floor. But for that excavation, the ground level would have been higher. It is well established that where the existing ground level has been excavated, it is reasonable to disregard the excavated level (Bettar v City of Sydney [2014] NSW LEC 1070).

The lack of any material or discernible adverse impact resulting from the minor non-compliance of the proposal with the height control must be counted as a positive environmental planning ground.

The non-compliance is less than that of the existing building, as shown in Figures 2 and 3, leading to positive outcomes for adjoining buildings in terms of views.

With respect to the impact on solar access, the proposal complies with the solar access provisions contained in the WDCP, meaning the height variation does not contribute to an unreasonable overshadowing impact.

The lack of any material or discernible adverse impact resulting from the minor non-compliance of the proposal with the height control must be counted as a positive environmental planning ground (Randwick v Micaul Holdings [2016] NSW LEC 7).

The considerations above provide strong environmental grounds in favour of justification of the contravention of the height of building standard to the small degree proposed."

The Applicant's justification for the variation to the development standard is agreed with. The variation arises due to the calculation of building height being from existing ground level, whether disturbed or undisturbed, in accordance with recent NSW Land and Environment Court (*Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582). If the extrapolated natural ground level were used to calculate building height, the development would be compliant with the development standard. The proposed development is designed and sited so as not to result in any unreasonable impacts to the subject site or adjoining sites. The proposed development is consistent with the objectives of both the height of buildings development standard and the zone in which the subject site is located (as detailed below).

In this regard, the Applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying Objects (c) and (g) of Clause 1.3 of the EPA Act. 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 Clause 4.6 (3)(b). Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3).

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

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

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

is proposed to be carried out

Comment:

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

Objectives of Development Standard

The underlying objectives of the standard of Clause 4.3 Height of Buildings are addressed as follows:

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

Comment:

The existing dwelling house on the site presents a maximum building height of 10.4 metres. The proposed development reduces the maximum building height to 9.4 metres. The subject site is surrounded by a variety of residential development types, which present a variety of building heights. To the immediate south, 1 Pavilion Street is developed with a dwelling house of a similar height and scale to the proposed development. To the immediate north, at 5 Pavilion Street, the residential flat building house presents a significantly greater building height (approximately 10 metres higher). To the west across the road at 2A Pavilion Street is another residential flat building of greater height than the proposed development. There are a number of other dwellings along Pavilion Street of comparable or greater building height. This context demonstrates the proposed development is compatible with, and comparable to, the height and scale of surrounding and nearby development.

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

Comment:

The proposed development, despite its non-compliance with the height of buildings development standard, is designed and sited so as to minimise visual impact, disruption of views, loss of privacy, and loss of solar access. The proposed development generally retains the existing building envelope, with the inclusion of a roof terrace being the predominant cause of the development standard breach. The location of the roof terrace is such that it does not result in disruption of views across the site from adjoining properties or the public domain. The roof terrace is established as acceptable with respect to visual privacy in the section of this report relating to Part D8 Privacy of the WDCP. The proposal results in a minor increase to overshadowing to the adjoining property to the south (1 Pavilion Street), though retains compliance with the requirements of Part D6 Access to Sunlight of the WDCP for the subject site and 1 Pavilion Street.

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

Comment:

The proposed development provides an updated presentation for the existing dwelling house, thereby improving its visual quality in the streetscape. The proposed development is of a suitable design and style to complement, and minimise impact to, the scenic quality of the area.

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

Comment:

The proposed development is most visible from Pavilion Street. The site is also visible from the ocean adjoining Freshwater Beach, though given the site's cliff-side setting, it would be viewed from the ocean at quite a distance. The presentation to the streetscape is improved by way of an architectural

update. The proposal does not include unreasonable bulk to the front setback are (as addressed in the section of this report relating to Part B7 Front Boundary Setbacks).

Objectives of the Zone

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

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

Comment:

The proposed development retains the single residential use of the subject site.

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

Comment:

Not applicable. The proposed development retains the single residential use of the subject site.

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

Comment:

The proposed development retains the existing low density residential use and landscaped setting of the site.

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

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

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

6.2 Earthworks

The objectives of Clause 6.2 Earthworks require development:

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

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

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

(f) the likelihood of disturbing relics

Comment:

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

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

Comment:

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

6.4 Development on sloping land

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

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

Comment:

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

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

Comment:

The Applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective. The application has also been assessed by Council's Development

Engineers in relation to stormwater. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development will not cause significant detrimental impacts because of stormwater discharge from the development site.

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

Comment:

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

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	Max. 7.2m	NW: Max. 8.2m	13.8%	No
		SE: Max. 7.9m	9.72%	No
B3 Side Boundary Envelope	5m	NW: Max. 1.2m outside envelope	17.65%	No
		SE: Max. 2.9m outside envelope	49.15%	No
B5 Side Boundary Setbacks	NW: Min. 900mm	Lower Ground: 0m to new works	100%	No
		Ground: 0m	100%	No - Existing
		First: 1.8m	-	Yes
	SE: Min. 900mm	Lower Ground: 900mm to new works	-	Yes
		Ground: 0m to stairs	100%	No - Existing
		Ground: 900mm to dwelling	-	Yes
		First: 900mm	-	Yes
B7 Front Boundary Setbacks	Min. 6.5m	Garage: 0m	100%	No
		Lower Ground: Garage: 0m Dwelling: 4.5m	100% 30.8%	No No
		Ground: Min. 5.9m	9.23%	No
		First: Min. 5.9m	9.23%	No
B13 Coastal Cliffs Setback	Max. 25m from front boundary	Max. 24.7m	-	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	Min. 40% (321.16m ²)	49.5% (397.7m ²)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	No	Yes
B13 Coastal Cliffs setback	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
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
E5 Native Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

The proposed development includes maximum wall heights of 8.2 metres to the north-western elevation and 7.9 metres to the south-eastern elevation, where a maximum of 7.2 metres is allowable under this control. With regard to the consideration for a variation, the development is considered against the underlying objectives of the control as follows:

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

Comment:

The portions of the development that cause the breach to the wall height control are to the rear of the dwelling and are therefore not visible from the street.

To ensure development is generally beneath the existing tree canopy level

Comment:

The proposed development, despite its non-compliance with the wall height control, is of a height below that would be consistent with a tree canopy level. However, it should be noted that there are no canopy trees in the vicinity of the subject site due to the general building lines and the lack of rear yards, being located on the cliff.

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

Comment:

Despite the non-compliance with the wall height control, the proposed development retains reasonable and equitable sharing of views, in that the siting of the dwelling house remains relatively unchanged.

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

Comment:

The proposed development is designed and sited so as not to result in any unreasonable impact on adjoining or nearby properties. The proposal results in a negligible increase to overshadowing to the south, and is designed to reasonably respect privacy with well-considered (or unchanged) windows and balconies.

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

Comment:

The proposed development includes gentle stepping down with the landform, in a similar way to the existing dwelling house. The proposal includes additional excavation at the lower ground level, though this does not contribute to the non-compliant wall heights.

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

Comment:

The proposal includes a flat roof so as to incorporate a roof terrace. This is innovative design in that it allows for provision of private open space for the site, given the topographical constraints to the rear yard (being a cliff face), where private open space would ordinarily be provided.

B3 Side Boundary Envelope

The proposed development includes breaches to the north-western and south-eastern side boundary envelopes of maximum 1.2 metres and 2.9 metres, respectively. With regard to the consideration for a variation, the development is considered against the underlying objectives of the control as follows:

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

Comment:

The proposed development generally retains the existing building envelope, with a reconfiguration of the upper level walls, which increases the development's numerical non-compliance with the side boundary setback control. The proposal is generally compliant with the side setback controls, with non-compliant elements remaining unchanged, or being acceptable on merit. In this way, the breaches to the side boundary envelope control is generally due to the site's sloping topography. The resultant bulk and scale does not create unreasonable visual dominance to adjoining properties, and is as anticipated for this locality.

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

Comment:

The proposed development is designed and sited so as not to result in any unreasonable impact on adjoining or nearby properties. The proposal results in a negligible increase to overshadowing to the south, and is designed to reasonably respect privacy with well-considered (or unchanged) windows and balconies.

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

Comment:

The proposed development includes gentle stepping down with the landform, in a similar way to the existing dwelling house. The proposal includes additional excavation at the lower ground level, though this does not contribute to the non-compliant side boundary envelope.

B5 Side Boundary Setbacks

The existing development includes some non-compliant elements, though these are not exacerbated. The proposed development introduces a new non-compliant side setback element, with the inclusion of new works at the lower ground level immediately at the north-western boundary. With regard to the consideration for a variation, the development is considered against the underlying objectives of the control as follows:

To provide opportunities for deep soil landscape areas.

Comment:

The new non-compliant element is located in the same place as the existing garage, so does not remove any deep soil area. The proposed development remains compliant with the required landscaped area.

To ensure that development does not become visually dominant.

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

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

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

Comment:

The new non-compliant built element is set below the ground level, so does not result in any visual dominance or additional bulk and scale. The non-compliant element does not impact upon privacy, amenity or solar access, and does not result in any obstruction of views.

B7 Front Boundary Setbacks

The proposed development introduces variations to the front boundary setback control, where 6 metres is the minimum required by this control. The non-compliant elements include:

- a double garage at the ground level (with car hoist below at the lower ground) immediately at the front boundary,
- the lower ground level of the dwelling 4.5 metres from the front boundary, and
- the ground and first floors 5.9 metres from the front boundary.

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 proposed development is set behind the existing 2.3 metre front fence, so the non-compliant elements are generally not visible from the street and do not impact upon the sense of openness from the street. From inside the property, the proposed development is not vastly different to the existing dwelling house with reference to openness in the front yard.

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

Comment:

Pavilion Street is generally significantly developed with built elements extending into the front setback areas commonly along the street. The proposed development is consistent with and complementary to the existing pattern of buildings and landscape elements along the street.

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

Comment:

The proposed development is set behind the existing 2.3 metre front fence. In this way, a significant portion of the development is obscured from view. The proposed development provides an updated presentation to the dwelling house, which enhances and contributes to the visual quality of the streetscape.

To achieve reasonable view sharing.

Comment:

The proposed development retains reasonable and equitable view sharing, despite the elements that are not compliant with this control.

D8 Privacy

The proposed development includes a rooftop terrace. Given this inclusion, the development is considered against the underlying objectives of this privacy 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:

The rooftop terrace is centrally located on the upper level of the altered dwelling house. The terrace is set 3.4 metres from the north-western side boundary, and 2.9 metres from the south-eastern side boundary. In order to provide a suitable design and amenity response, a condition of consent has been included in the recommendation of the report reducing the size of the roof terrace to provide setbacks of 6 metres to both the north-western and south-eastern side boundaries. This provides suitable separation and amenity to adjoining properties while allowing a place of outdoor recreation for occupants of the subject site. While the terrace is an area of outdoor recreation, the modified terrace is suitable with respect to privacy given the context of the subject site and adjoining sites. The location of the development on a cliff face lends significant valuable beach, ocean and headland views to the site and adjoining properties, across side and rear boundaries. To enable this, very little in the way of boundary fencing and privacy features are provided across these sites. That is to say, as it currently stands, the sites promote overlooking for the benefit of views. To the north of the site, 5 Pavilion Street is developed

with a residential flat building. In this way, the subject site is overlooked, rather than doing the overlooking. To the south, 1 Pavilion Street includes a comparable terrace to that in the proposal, as modified by the recommended condition of consent.

To encourage innovative design solutions to improve the urban environment.

Comment:

The proposed roof terrace is innovative design in that it allows for provision of private open space for the site in a suitable location, given the topographical constraints to the rear yard (being a cliff face), where private open space would ordinarily be provided.

To provide personal and property security for occupants and visitors

Comment:

As modified by the recommended condition of consent, the inclusion of the rooftop terrace does not adversely impact upon the security of the occupants and visitors for the subject site and adjoining sites.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$21,358 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,135,837.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

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

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

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

PLANNING CONCLUSION

This proposal, for alterations and additions to a dwelling house has been referred to the Development Determination Panel (DDP) due to the variation to the height of buildings development standard of 13.53%.

The concerns raised in the objections have been addressed and resolved by amended plans and further geotechnical assessment, demonstrating acceptable risk.

The critical assessment issues related to non-compliance with height of buildings, wall heights, setbacks, and side boundary envelope controls. The non-compliant elements are acceptable on merit as detailed throughout this report.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.

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

RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2023/0278 for Alterations and additions to a dwelling house including construction of a swimming pool on land at Lot 1 DP 949656, 3 Pavilion 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	Date of Plan
338_DA_111	C	Site Plan	Collins and Turner	11 August 2023
338_DA_131	C	Excavation Plan	Collins and Turner	11 August 2023
338_DA_140	C	Lower Ground Floor	Collins and Turner	11 August 2023
338_DA_141	C	Ground Floor	Collins and Turner	11 August 2023
338_DA_142	C	First Floor	Collins and Turner	11 August 2023
338_DA_143	C	Roof Terrace	Collins and Turner	11 August 2023
338_DA_201	C	Elevations	Collins and Turner	11 August 2023
338_DA_202	C	Elevations	Collins and Turner	11 August 2023
338_DA_310	C	Sections	Collins and Turner	11 August 2023
338_DA_311	C	Sections	Collins and Turner	11 August 2023
SW01	B	Stormwater Plan	Hyve Designs	22 December 2022
SW02	B	Stormwater Plan	Hyve Designs	22 December 2022

SW03	B	Stormwater Plan	Hyve Designs	22 December 2022
SW04	B	Stormwater Plan	Hyve Designs	22 December 2022
SW05	B	Stormwater Details	Hyve Designs	22 December 2022
SE01	B	Sediment & Erosion Plan	Hyve Designs	22 December 2022
SE02	B	Sediment & Erosion Details	Hyve Designs	22 December 2022

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate No. A483181_02	-	Efficient Living	7 February 2023
Geotechnical Assessment	34660AFrpt	JK Geotechnics	11 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	2023/221817 Ausgrid Referral Response	5 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 Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically

approved in this consent including for the erection of any fences, hoardings or other temporary works.

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$21,358.37 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$2,135,836.75.

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. Landscape Plan

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

- i) the front setback landscaped open space on deep soil, to the south of the pedestrian entry, shall be used for growing plants, lawn or trees, but shall not include hard paved area,
- ii) proposed planting scheme for the roof terrace,
- iii) the roof terrace planter area, adjacent to the southern boundary, shall include species capable of attaining a height of 800mm.

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

Reason: Landscape amenity.

8. On Slab Landscape Works

Details shall be submitted to the Principal Certifier prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided. Landscape treatment details shall be submitted to the Principal Certifier prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, and services connections.

The following soil depths are required to support landscaping:

- i) 300mm for groundcovers, perennials, and grasses,
- ii) 600mm for shrubs.

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

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

9. Stormwater Disposal from Low Level Property

The applicant is to demonstrate how stormwater from the new development within this consent shall be disposed of to an existing approved system or in accordance with Northern Beaches Council's "Warringah Water Management Policy PL 850" in particular the Stormwater Drainage from Low Level Properties Technical Specification. Details demonstrating that the existing approved system can accommodate the additional flows or compliance with the Northern Beaches Council's "Warringah Water Management Policy PL 850" are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

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

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

The recommendations identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the construction certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

11. **Vehicle Crossings Application**

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing a maximum of 4 metres wide on the kerb line and a maximum of 6 metres wide on the property boundary in accordance with Northern Beaches Council Standard Drawing A4/3330/3 NL 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.

12. **Amendments to the Approved Plans**

The proposed roof terrace shown on the plan titled Roof Terrace Drawing Number 338_DA_143 Revision C dated 11 August 2023 is to be reduced in size so as to be set 6 metres from the north-western and south-eastern side boundaries. 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.

13. **Structural Adequacy and Excavation Work**

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

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
- (b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: To provide public and private safety.

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

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

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

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

15. **Pre-commencement Dilapidation Report - Public Land**

The applicant must prepare and submit a pre-commencement dilapidation report providing an accurate record of the existing condition adjoining public property and public infrastructure (including roads, gutter, footpaths, etc). A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties.

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

Note: A dilapidation report can comprise of video footage and photos of adjacent public infrastructure and relevant structures on adjoining properties.

Reason: Protection of adjoining properties and Council's infrastructure during construction.

16. **Coastal Bluff Engineering Assessment Implementation**

The advice and recommendations contained in the approved Coastal Engineering Assessment report prepared by Haskoning Australia PTY LTD, dated 1 March 2023, must be addressed as necessary through the Geotechnical Risk Management Report prepared in support of the development application and must be incorporated as required into construction plans and structural specifications for the development.

Reason: To ensure potential hazards associated with development on a Coastal Bluff are minimised.

17. **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

18. **Compliance with Standards**

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

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

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

19. **Sydney Water "Tap In"**

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

20. **Pre-Construction Dilapidation Report - Adjoining Properties**

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifier prior to any works commencing on the site (including demolition or excavation):

- 1 Pavilion Street, Queenscliff
- 5 Pavilion Street, Queenscliff

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.

The dilapidation reports are to be prepared by a suitably qualified person. Copies of the reports 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 reports is denied by an adjoining owner, the Applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifier must be satisfied that the requirements of this condition have been met prior to commencement of any works. If access is denied, then no dilapidation report is required.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the commencement of any works on site.

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

21. **Public Liability Insurance - Works on Public Land**

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

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

22. Geotechnical Hazards

The subject property is located within a Potential Geotechnical Landslip Hazard area. Due to the works proposed, the additional geotechnical assessments and investigations recommended in the Geotechnical Assessment report prepared by GK Geotechnics, dated 11 August 2023, are required to be completed prior to the commencement of works.

Reason: To ensure that the proposed works will not have any detrimental impacts within the potential geotechnical landslip hazard area or on environmentally or culturally sensitive areas.

23. 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**24. Protection of Rock and Sites of Significance**

All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.

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

Reason: Preservation of significant environmental features.

25. 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.

26. **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.

27. **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.

28. **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.

29. **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.

30. **Geotechnical Requirements**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

31. **Survey Certificate**

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

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

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

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

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

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

32. **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.

33. Stockpiling Materials

During construction, all construction materials, waste and debris associated with works are to be contained at source, covered and must be within the construction area. All waste and debris are to be removed off site and disposed of according to the approved Waste Management Plan and applicable regulations. The property is to be kept clean and any building waste and debris removed as frequently as required to ensure no materials enter receiving waters.

Reason: To ensure pollution control measures are effective to protect the aquatic habitats within receiving waters throughout the construction period.

34. 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**35. 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) mass planting shall be installed at minimum 1 metre intervals for shrubs of a minimum 200mm container size at planting, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch.

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.

36. Native Landscaping

Any new landscaping is to incorporate locally native species in order to retain and enhance native vegetation and the ecological functions of wildlife corridors. Species are to be consistent with the relevant section of the Native Planting Guide available on Council's website.

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

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

37. 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.

38. **Post-Construction Dilapidation Reports - Adjoining Properties**

Post-construction dilapidation reports for the properties listed in the condition titled 'Pre-Construction Dilapidation Report - Adjoining Properties' must be submitted after the completion of works. The reports must:

- Compare the post-construction report with the pre-construction report,
- Clearly identify any recent damage (including photos) and whether or not it is likely to be the result of the development works, and
- Suggested remediation methods, should any damage have occurred.

Copies of the reports must be given to the property owners referred to in the condition titled 'Pre-Construction Dilapidation Report - Adjoining Properties'. 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.

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

40. **Reinstatement of Kerb**

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

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

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

41. **Certification Elevated Parking Facility Work**

The Applicant shall submit a Structural Engineers' certificate certifying that the elevated parking facility was constructed in accordance within this development consent and the provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical controls. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: Compliance with this consent.

42. Retaining wall

The retaining wall works shall be certified as compliant with all relevant Australian Standards and Codes by a Structural Engineer. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: Public and Private Safety

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES**43. Landscape Maintenance**

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

A maintenance activity schedule for on-going maintenance of planters on slab shall be incorporated to monitor and replenish soil levels as a result of soil shrinkage over time.

The approved landscape area shall in perpetuity remain as planting under the development consent.

Reason: To maintain local environmental amenity.

44. 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.

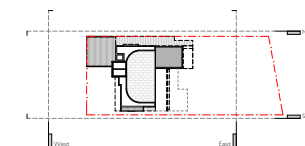
Reason: To ensure geotechnical risk is mitigated appropriately.

45. No Approval for Secondary Dwelling

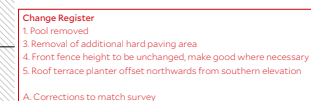
No approval is granted or implied under this Development Consent for the use of any part of the dwelling house for the purpose of a secondary dwelling or separate occupancy. Built in cooking facilities are not permitted to be installed, other than those shown in the designated kitchen areas.

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

194



S ————— South Elevation
1:100



North Elevation
1:100

Architect
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Registered Architect in NSW
Penelope Collins ARB 7342

Notes

01 Do not scale; dimensions govern
02 All dimensions are in millimetres
03 All dimensions to be verified on site
04 Collins and Turner is to be notified of any discrepancies

No	Date	By	Note
01	16/11/22	TD	For client
02	5/12/22	TD	For information
03	7/12/22	TD	For information
04	9/12/22	TD	For information
05	21/12/22	TD	For information
06	27/2/23	TD	For client
A	6/3/23	TD	For DA
B	3/8/23	TD	For DA RFI
C	11/8/23	TD	For DA RFI

Client
Fiona & Warren Turner
3 Pavilion St
Queenscliff NSW 2096

North

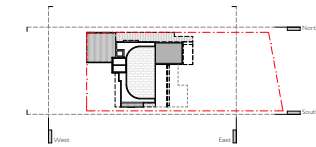


Project
338
Pavilion Street
3 Pavilion St
Queenscliff NSW 2096

Copyright Collins and Turner 2023

Drawing title	Elevations
	
	
	

Scale	1:100
Date	02/11/22
Drawn by	TD
Drawing Number+ Revision	338_DA_201

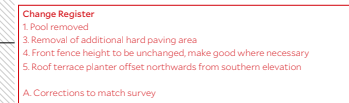


Key Plan
1:500

Legend

 Proposed

 Existing



Architect
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Client
Fiona & Warren Turner
3 Pavilion St
Queenscliff NSW 2096

Scale bar

0 2 4 8 16

Project
338
Pavilion Street
3 Pavilion St
Queenscliff NSW 2096

Copyright Collins and Turner 2023

Drawing title	Elevations

Scale	1:100
Date	02/11/22
Drawn by	TD
Drawing Number+ Revision	338_D

1

3 PAVILION STREET, QUEENSCLIFF
CLAUSE 4.6 VARIATION STATEMENT
COLLINS AND TURNER

Development proposal for alterations and
additions to 3 Pavilion St, Queenscliff
Prepared for Warren and Fiona Turner
March 2023

3 PAVILION STREET, QUEENSCLIFF
CLAUSE 4.6 VARIATION STATEMENT
COLLINS AND TURNER

Revision ID	Name	Details of Revision	Date
A	T Dwyer	DA Issue	10/03/23
B	T Dwyer	DA RFI response	11/08/23

March 2023

CLAUSE 4.6 VARIATION STATEMENT

3 PAVILION ST, QUEENSCLIFF

NOTE: This statement is prepared with reference to the architectural drawings and needs to be read in conjunction with the Statement of Environmental Effects (SEE) that is submitted with this development application. Both the architectural plans and SEE have been prepared by Collins and Turner Pty. Ltd.

This variation statement refers to the questions contained in the judgement in Initial Action Pty Ltd v Woollahra Municipal Council (2018) NSWLEC 118. Wehbe v Pittwater Council [2007] NSWLEC 827 and Project Ventures v Pittwater Council [2005] NSWLEC 191 are also considered.

1. Introduction

The permissible height of buildings (HoB) for the subject site is defined by clause 4.3 of the Warringah Local Environment Plan 2011 (WLEP).

The objectives of this clause are as follows -

- (a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,
- (c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,
- (d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.

The HoB map defines the permissible HoB for the subject site as 8.5m above the existing ground level.

The proposed development is partially non-compliant. The parapet and balustrade of the roof terrace sit approximately 1150mm above the 8.5m height line in some areas.

The existing dwelling, prior to demolition, also breached the HoB control. These differences can best be appreciated from the 3D analysis shown in figures 2 and 3.

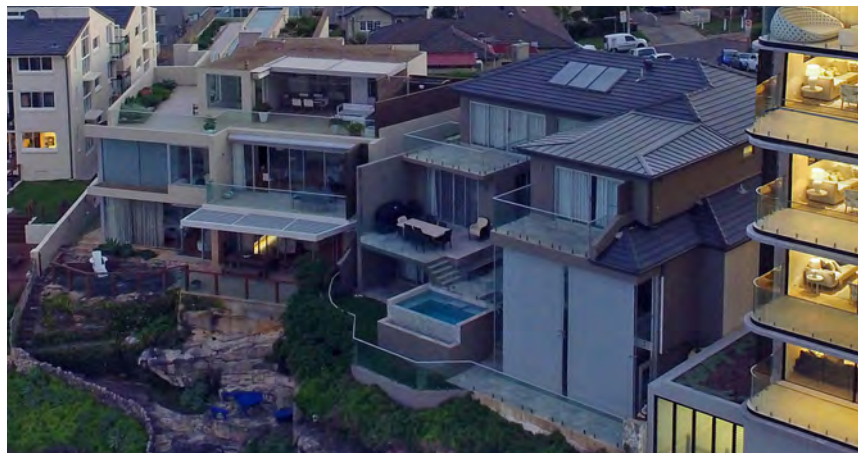


Figure 1: The subject site - centre right - as seen from a drone above Freshwater Beach

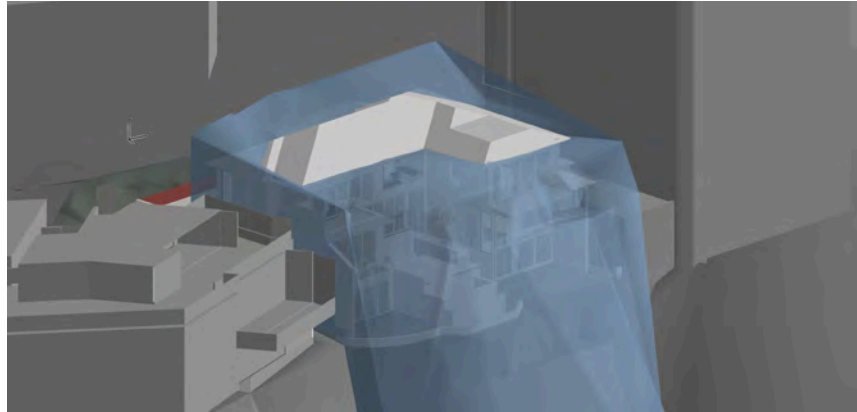


Figure 2: Existing non-compliance with the HoB shown in white

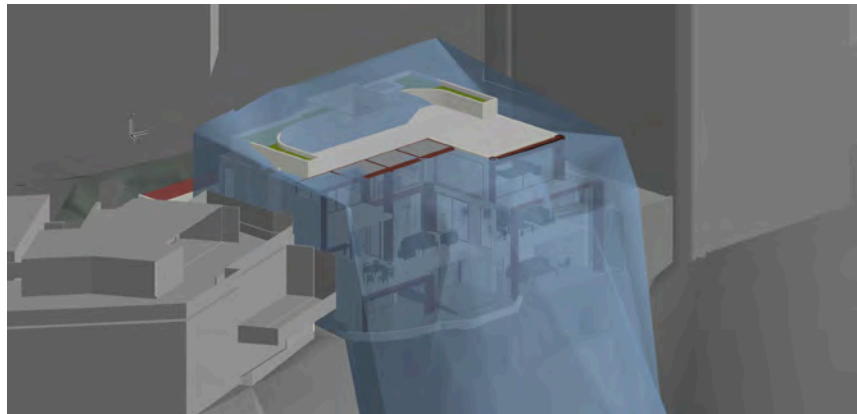


Figure 3: Proposed non-compliance with the HoB shown in white/ green

2 Requirement for a clause 4.6 Variation Statement

Under Clause 4.6 of the WLEP 2011, consent may be granted for development even though the development would contravene a development standard imposed under the WLEP 2011. Subclauses 3 and 4 require a “written request” to be prepared and submitted by the applicant to the consent authority in relation to any breaches of a specific development standard. The following requirements have to be addressed in the written request:

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

In addition, subclause (4) states development consent must not be granted for development contravening 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

- (iii) increase the availability and variety of dwellings to enable population growth without having adverse effects on the character and amenity of Warringah,
- (f) in relation to environmental quality, to—
 - (i) achieve development outcomes of quality urban design, and
 - (iv) ensure that development does not have an adverse effect on streetscapes and vistas, public places, areas visible from navigable waters or the natural environment, and

The proposal satisfies the relevant aims of the WLEP as follows:

Reducing the overall height of the existing dwelling to better enable view sharing

Providing a green roof to minimise heat island effects (a major emerging concern)

Minimising the transport of excavated material off-site by re-using it for the green roof.

Employing an award-winning and widely recognised architecture firm to design a building of design excellence.

The proposal is in keeping with the neighbouring developments in terms of bulk, scale and appearance, i.e. a two-storey residential dwelling when viewed from the street. This is in stark contrast to the outlier of Pavilion Street, #5, to the immediate north of the subject. Further, the site immediately to the south also includes roof terraces, demonstrating this is an emergent neighbourhood characteristic.

5. Is the development consistent with the relevant objectives of Zone R2 – Low-Density Residential?

The relevant objectives of Zone R2 are:

- To provide for the housing needs of the community within a low-density residential environment.
- To provide for development that is compatible with the character and amenity of the surrounding neighbourhood.
- To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.

The proposal satisfies the relevant objectives of Zone R2 as follows:

The proposed dwelling house is located within an area of dwelling houses on the coastal side of Pavilion Street. The proposal maintains the low-density residential environment of the neighbourhood, 5 Pavilion Street withstanding, and provides for the housing needs of the community.

The proposal for a dwelling house conforms with the existing low-density residential character of the area. The amenity of the neighbouring properties will be maintained through the proposed scheme, which minimises the degree of potential adverse environmental impacts of the new development on its surroundings.

The height non-compliance is minor and does not create any material adverse impacts on the public or private domains, as the proposal is well below the permitted building height when viewed from the street.

6. Is the development consistent with the relevant objectives of Clause 4.3 – Height of building?

The relevant objectives of Clause 4.3, Height of building, are:

- (a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,
- (c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,
- (d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.

The proposal satisfies the relevant objectives of Clause 4.3 as follows:

Dwellings in the locality are controlled by a 8.5m height of building development standard. The immediate neighbour at 5 Pavilion is a six-storey, multi-residential development significantly in breach of this 8.5m level. The proposed dwelling is non-compliant by only 1135mm, a measurement that will not negatively impact neighbouring dwellings or the public domain

Shadow diagrams prepared for the proposal show very little additional shading of neighbouring properties. The small non-compliance does not result in loss of solar access to adjoining properties or open space.

Given the existing dwelling on the site has a higher ridge line than what is proposed, there will be a material improvement in the view sharing. The non-compliance has no discernible impact on public domain views. There have never been any views across the site from the public domain. The proposal does not change that.

7 Can the consent authority be satisfied that compliance with the development standard is unnecessary or unreasonable because the objectives of the development standard are achieved notwithstanding non-compliance with the standard? Clause 4.6(3)(a)

In *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 [16], Preston CJ states:

“As to the first matter required by cl 4.6(3)(a), I summarised the common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary in *Wehbe v Pittwater Council* at [42]-[51],

And although the above-referenced common ways were said in the context of an objection under SEPP 1 – Development Standards in *Wehbe*, they are still applicable to the purpose of an application under a Clause 4.6 variation statement.

Preston CJ further notes in [17] of *Initial Action*:

“the first and most commonly invoked way 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.”

The proposal satisfies not only the relevant objectives of clause 4.3 for the HoB development standard but that the proposal also complies with the general aims of the WLEP 2011 and the objectives of zone R2, in which the site is located.

The application of the development standard is unnecessary because the proposal meets all the relevant objectives in the LEP in spite of the breach of the height of building by a maximum of 1035mm. If all the relevant objectives are met, the numerical development standard has no further work to do and is thus unnecessary. Additionally, as all the relevant objectives are met, it is also unreasonable to apply the development standard in this case, as the impact is negligible and arises only as a consequence of the slope along and across the site. Compliance with the relevant standard is, therefore, both unreasonable and unnecessary for the purposes of clause 4.6(3)(a) of the LEP.

As to whether or not compliance is unreasonable, the development is well below the required height from street level, and all views over the site are preserved with building height less than the of the existing dwelling.

The bulk and scale of the proposal are in keeping with the future character of the area to the extent that the planning controls reflect such character. Considering that the bulk and scale are largely consistent with dwellings in its vicinity, the proposal presents an acceptable design and demonstrates compliance with the first test under Wehbe, quoted above.

8 Are there sufficient environmental planning grounds to justify contravening the development standard?

The environmental planning grounds to justify contravening Clause 4.3 of WLEP 2011 are summarised below:

One element of the breach of the height control results from the provision of a green roof. The proposal accords with planning changes underway at Northern Beaches Council, where the reduction of heat island effects has become an emerging concern.

Part of the breach arises from an existing, excavated lower ground floor. But for that excavation, the ground level would have been higher. It is well established that where the existing ground level has been excavated, it is reasonable to disregard the excavated level (*Bettar v City of Sydney* [2014] NSW LEC 1070).

The lack of any material or discernible adverse impact resulting from the minor non-compliance of the proposal with the height control must be counted as a positive environmental planning ground.

The non-compliance is less than that of the existing building, as shown in Figures 2 and 3, leading to positive outcomes for adjoining buildings in terms of views.

With respect to the impact on solar access, the proposal complies with the solar access provisions contained in the WDCP, meaning the height variation does not contribute to an unreasonable overshadowing impact.

The lack of any material or discernible adverse impact resulting from the minor non-compliance of the proposal with the height control must be counted as a positive environmental planning ground (*Randwick v Mical Holdings* [2016] NSW LEC 7).

The considerations above provide strong environmental grounds in favour of justification of the contravention of the height of building standard to the small degree proposed.

9 Can the consent authority be satisfied that the proposed development will be in the public interest having regard to the development standard and zone objectives?

In accordance with Clause 4.6, subclause (4)(a)(ii) of WLEP 2011, the proposal is in the public interest as the proposed development is consistent with: "(a) the objectives of the particular standard, and (b) the objectives for development within the zone in which the development is proposed to be carried out."

The proposal is consistent with the objectives of the R2 zoning as the proposal maintains the low-density residential character of the area and will have a minimal environmental impact by meeting the key LEP and DCP planning controls other than two elements infringing the height control at the leading (coastal) edge of the dwelling.

To the extent that the public interest is served where the environmental impacts of the proposal are both contained and constrained, the proposal can be said to be in the public interest.

10 Can the approval authority be satisfied that subclause (3) of Clause 4.6 of the Warringah LEP 2011 has been met and that the proposal is in the public interest?

For the reasons enumerated above, subclause (3) of Clause 4.6 has been met. As discussed above, compliance with the development standard is both unnecessary and unreasonable in the minor circumstances of this particular case.

Compliance with the development standard is unnecessary as the proposed development is in keeping with the surroundings, has minimal impact on the neighbouring dwellings and is less than that of the existing building.

Compliance with the LEP standards and objectives, in general, is a matter of both public and private interest, and the proposal achieves this through its careful design and siting, even though infringing the height control to a minor degree.

There are sufficient environmental planning grounds to support the proposition that the minor contravention is in the public interest due to its benefits, such as a reduction in the heat island effect and improved view sharing.



Architecture

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ITEM 3.5

**REV2023/0020 - 23 DOBROYD ROAD BALGOWLAH HEIGHTS -
REVIEW OF DETERMINATION OF APPLICATION DA2023/0043
FOR DEMOLITION WORKS AND CONSTRUCTION OF A
DWELLING HOUSE**

REPORTING MANAGER**Rod Piggott****TRIM FILE REF****2023/670117****ATTACHMENTS**

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

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to REV2023/0020 for Review of Determination of Application DA2023/0043 for demolition works and construction of a dwelling house on land at Lot 12 DP 758044, 23 Dobroyd Road BALGOWLAH HEIGHTS, subject to the conditions set out in the Assessment Report.

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2023/0020
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Responsible Officer:	Jordan Howard
Land to be developed (Address):	Lot 12 DP 758044, 23 Dobroyd Road BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Review of Determination of Application DA2023/0043 for demolition works and construction of a dwelling house
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Alanna Margaret Valerio
Applicant:	Minto Planning Services Pty Ltd

Application Lodged:	18/08/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	24/08/2023 to 07/09/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 1,250,000.00
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EXECUTIVE SUMMARY

This Review of Determination application seeks to review the determination of DA2023/0043, which was lodged for demolition works and construction of a dwelling house, and subsequently refused under delegated authority on 9 June 2023.

This application is referred to the Development Determination Panel (DDP), as it is a Review of Determination of an application previously determined under delegated authority, therefore, is required to be determined by the DDP.

Critical assessment issues which made up the reasons for refusal of DA2023/0043 included building

height and associated written request to vary a development standard (4.6 Request), streetscape and wall height / number of storeys.

This assessment finds that the applicant has made suitable amendments to the proposed development, while it still constitutes substantially the same development. This has included a reduction of the proposed building height to 8.43m, compliant with the development standard of 8.5m.

The merits of the revised design have been reviewed and the reasons for refusal of DA2023/0043 have been satisfactorily addressed.

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

PROPOSED DEVELOPMENT IN DETAIL

This Review of Determination seeks to review the determination of DA2023/0043 for demolition works and construction of a dwelling house. This application was refused under delegated authority on 9 June 2023.

DA2023/0043 proposed the demolition of the existing dwelling house and the construction of a new dwelling house.

Under the s8.2A Review Application, the proposal remains substantially the same as the original proposal, with the following differences:

- Provision of Basement Storage
- Rear wall of Basement Level moved 600mm to line up with floor above
- Internal storage wall moved East 970mm
- Ground Floor Wall extended south 600mm
- Width of rear of Dwelling reduced from 7825 to 7705 so as to provide for a wider Alfresco area
- Front section of house lowered by 300mm and introduction of internal steps
- Overall height of building reduced from 8732mm to 8432mm.
- External Height reduced from 7882mm to 7582mm.
- Roof line & gutter altered due to lowering of house
- Reduced Window size
- Skylights x 2 added
- 2 x smaller windows provided instead of 1 large window
- FSR calculations updated
- Rainwater tanks moved further south
- Change in roof sheeting colour from Shale Grey to Wind Spray.

ASSESSMENT INTRODUCTION

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

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

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

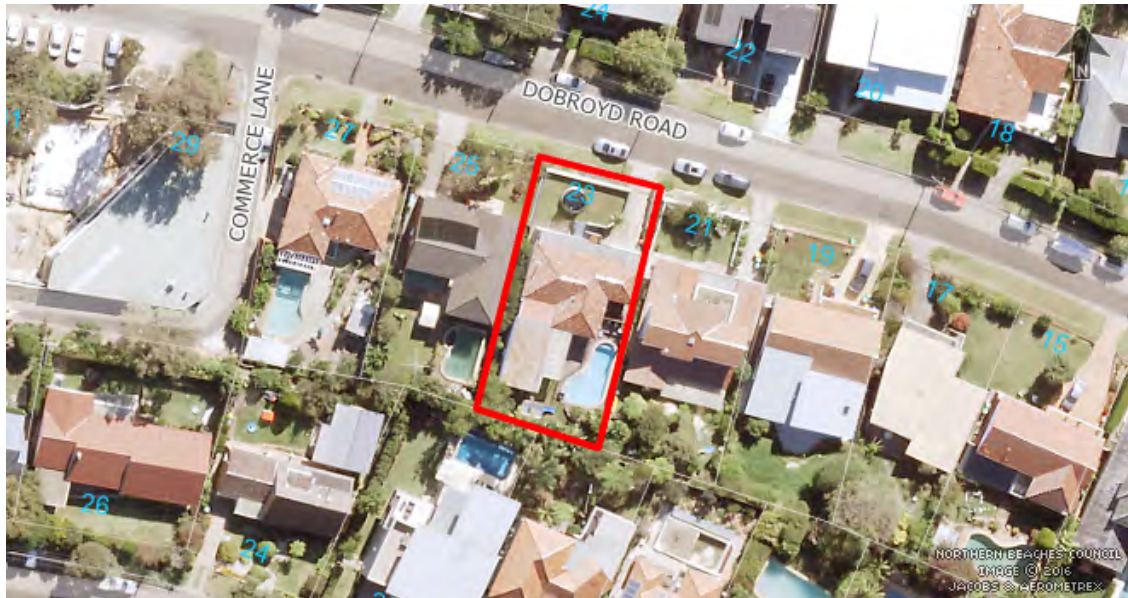
SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 8.3 - Environmental Planning and Assessment Act 1979 - Section 8.3
 Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

SITE DESCRIPTION

Property Description:	Lot 12 DP 758044 , 23 Dobroyd Road BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	The subject site consists of one (1) allotment located on the southern side of Dobroyd Road, Balgowlah Heights. The site is generally regular in shape with a surveyed area of 594.4sqm. The site is located within the R2 Low Density Residential zone and accommodates a split level dwelling and swimming pool. The garage for the dwelling is located within an existing excavated semi-basement on the north-east corner of the dwelling. The site has a northerly aspect with a slope falling down from the rear boundary towards the frontage on Dobroyd Road. A significant rock outcrop is located on the front boundary of the site. Adjoining and surrounding development is characterised by single and two-storey dwelling houses.

Map:



SITE HISTORY

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

DA2021/2166: Consent granted for the "Alterations and additions to a dwelling house" on 7 January 2022. The approved development had a total height of 9.05m, which is a 6.5% variation with the standard. The number of storeys was assessed at 2, as opposed to the subject proposal, which is assessed as 3 storeys in height, consistent with the definitions within Manly Development Control Plan 2013.

DA2023/0043: Development Application for Demolition works and construction of a dwelling house. This application was refused on 9 June 2023 and is the subject of this Review of Determination.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

In accordance with Section 8.3 (2) of the Act, the request for the review must be made and determined within 6 months after the date of determination of the development application. The application was determined on 9 June 2023 and the notice of determination was issued on the same day. The review was lodged (submitted on the Planning Portal) on 15 August 2023, was accepted by Council on 18 August 2023, and is to be considered by the Development Determination Panel (DDP) on 25 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 'Proposed Development in Detail' 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. Accordingly it is concluded that the amended scheme is substantially the same as the original proposal. Accordingly, it is considered that the proposal satisfies the requirement of Section 8.3 (3) of the Act.

DA2023/0043 was refused under delegated authority on 9 June 202. The following is a list of the reasons for refusal and how each have been addressed in the amended scheme proposed in this review:

1. Height of Buildings

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 4.3 Height of Buildings of the Manly Local Environmental Plan 2013.

Particulars:

The development proposes a maximum building height of 8.732m. This presents a variation of 2.7% to the development standard.

Comment:

The amended proposal has a maximum building height of 8.43m, compliant with the development standard of 8.5m. As such, the amended proposal now complies with the provisions of Clause 4.3 Height of Buildings of the Manly Local Environmental Plan 2013.

2. Written request to vary a development standard

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 Manly Local Environmental Plan 2013.

Particulars:

Council is not satisfied that the Cause 4.6 Written request establishes why it is unreasonable or unnecessary to comply with the development standard and has failed to demonstrate that there are sufficient environmental planning grounds to justify the variation.

Comment:

The amended proposal has a maximum building height of 8.43m, compliant with the development standard of 8.5m. As such, the amended proposal now complies with the provisions of Clause 4.3 Height of Buildings of the Manly Local Environmental Plan 2013. Therefore, the proposal does not require a Clause 4.6 Written request to justify a variation to the height of buildings development standards, as this development standard is now complied with.

3. Streetscape (Residential areas)

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 3.1.1 Streetscape (Residential areas) of the Manly Development Control Plan 2013.

Particulars:

The proposed development is not complimentary to the existing streetscape and has no adequate regard to the relevant standards and controls.

Comment:

The amended proposal includes a number of changes to the proposed dwelling house, most significantly the proposal now achieves compliance with the height of buildings development standards. The changes have resulted in a smaller dwelling house, achieving a greater level of compliance with development standards and built form controls, and presenting an acceptable level of bulk and scale to the street, commensurate to surrounding development. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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

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 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height) of the Manly Development Control Plan.

Particulars:

The proposed development results in part of the proposed dwelling being three storey in construction, which breaches the maximum number of storeys which is two.

Comment:

Refer to the section of this report on MDCP Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys and Roof Height) for a detailed assessment. The amended proposal includes a number of differences, most significantly the proposal now achieves compliance with the height of buildings development standards. Whilst the number of storeys technically remains at 3 (as the basement level does not entirely meet the strict definition of basement contained in the Manly Local Environmental Plan 2013), amendments have been made regarding other reasons for refusal, which have changed the size and scale of the proposal. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

This assessment finds that the applicant has made substantive amendments to the proposed development, while still constituting substantially the same development. The reasons for refusal of DA2023/0043 have been satisfactorily addressed and, therefore, this report concludes with a recommendation that the DDP grant approval to the review application, subject to conditions.

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 24/08/2023 to 07/09/2023 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 of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<i>Supported, subject to conditions.</i> Council's Landscape Referral section have considered the application against the Manly Local Environment Plan (MLEP), and the following Manly DCP 2013 (MDCP) controls (but not limited to): • 3.3.1 Landscaping Design • 3.3.2 Preservation of Trees or Bushland Vegetation • 4.1.5 Open Space and Landscaping, including 4.1.5.2 (c) Minimum Tree Plantings The road reserve verge contains prominent rock outcrops along the frontage and this shall be preserved. The property does not contain any prescribed trees and the proposal is to retain existing vegetation and enhance the landscape setting with additional landscape planting. A Landscape Plan is submitted that indicates retention of the existing landscape planting at the rear and elsewhere, and enhances the landscape setting with additional landscape treatment including native tree planting to the front and rear of the property, along with other vegetation planting such that the applicable MDCP landscape controls are satisfied, and Landscape Referral raise no concerns subject to conditions as imposed for the completion of landscape works.
NECC (Development Engineering)	<i>Supported, subject to conditions.</i> The proposal is for the construction of a new dwelling. No objections to approval subject to conditions as recommended.
External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<i>Supported, subject to conditions.</i> The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1360370S_02, dated 2 August 2023).

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

Commitment	Required Target	Proposed
Water	40	41
Thermal Comfort	Pass	Pass
Energy	50	50

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.43m	-	Yes
Floor Space Ratio	FSR: 0.45:1 (267.5sqm)	FSR: 0.444:1 (264.2sqm)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 594.4sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwellings	1	-	Yes
	Dwelling Size: Min. 112sqm (4 bedroom, 3 bathroom)	264.2sqm	-	Yes
4.1.2.1 Wall Height	East: 7.7m (based on gradient 1:5)	7.7m	-	Yes
	West: 6.7m (based on gradient 1:30)	6.9m	3%	No
4.1.2.2 Number of Storeys	2	3 (based on basement level not strictly meeting the	-	No

		definition of a basement for its entirety)		
4.1.2.3 Roof Height	Height: 2.5m	1.3m (rear ground floor roof) 0.7 (first floor roof)	-	Yes
	Pitch: maximum 35 degrees	20.5 degrees (rear ground floor roof) 5 degrees (first floor roof)	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	7.1m, consistent with prevailing setback	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	East: Ground Floor: 1.6m (based on wall height 4.8m) First Floor: 2.6m (based on wall height 7.7m)	1.6m 3.2m	- -	Yes Yes
	West: Ground Floor: 1.3m (based on wall height 4m) First Floor: 2.3m (based on wall height 6.9m)	1.7m 3.7m	- -	Yes Yes
	No windows within 3m of a side boundary	9 windows within 3m of a side boundary	N/A	No
4.1.4.4 Rear Setbacks	8m	8.1m	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Total open space 55% (326.9sqm) of site area	50.5% (300sqm)	8.2% (26.9sqm)	No
	No more than 25% (75sqm) of total open space above ground	9.3% (28sqm)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% (105sqm) of total open space	81.7% (245sqm)	-	Yes
	3 native / canopy trees	2 native / canopy trees	33%	No
4.1.5.3 Private Open Space	18sqm	>18sqm	-	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	30.4% of frontage (5.1m)	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.3.3 Footpath Tree Planting	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	No	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

The amended proposal includes a number of changes to the proposed dwelling house, most

significantly the proposal now achieves compliance with the height of buildings development standards. The changes have resulted in a smaller dwelling house, achieving a greater level of compliance with development standards and built form controls, and presenting an acceptable level of bulk and scale to the street, commensurate to surrounding development. Accordingly, the proposal is now considered to meet the relevant objectives and requirements of MDCP Clause 3.1.1 Streetscape (Residential Areas).

3.4.3 Maintenance of Views

During the assessment of DA2023/0043, one (1) submission was received from an adjoining property, raising potential loss of views. This submission was withdrawn during the assessment process. View loss did not form a reason for refusal of DA2023/0043.

This Review of Determination has been publicly exhibited 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, no submissions were received. The amended proposal has brought the building height into compliance with the height of buildings development standard, thereby reducing the potential visual impact of the proposal.

Considering the above, the development is considered to comply with the requirements and objectives of the Clause and to promoting view sharing through the proposal of a dwelling house achieving a greater level of compliance with development standards and built form controls, commensurate to surrounding development.

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

Description of non-compliance

Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height) stipulates that walls are not to exceed:

- 7.7m (based on gradient 1:5) for the eastern elevation.
- 6.7m (based on gradient 1:30) for the western elevation.

The proposal presents a compliant wall height on the eastern elevation of 7.7m.

The proposal presents a non-compliant wall height on the western elevation of 6.9m, representing a variation of 3% to the control.

Clause 4.1.2.2 Number of Storeys also requires that the building must not exceed 2 storeys. Basements are not included as a storey. The definition of a basement in the MLEP 2013 is as follows:

Basement means the space of a building where the floor level of that space is predominantly below ground level (existing) and where the floor level of the storey immediately above is less than 1 metre above ground level (existing).

The floor immediately above the garage is more than 1m above ground level (existing) for most of the garage, except a portion of the rear storage area. Therefore, the Garage level does not strictly meet the definition of basement in the MLEP 2013 and is included as a storey. As such, the proposal is 3 storeys. It should be noted that this Garage largely occupies the place of an existing garage on the site, plus additional excavation to accommodate for a larger proposed garage and storage area.

Furthermore, dwelling houses presenting 3 storeys to the street, due to this technical definition of basement which captures some garages, are a common feature of residential development the surrounding locality and street.

Merit consideration

There are no underlying objectives of this control under which to consider the merits of this variation. This clause instead relies on the objectives for the Height of Buildings at clause 4.3 in the Manly LEP 2013. An assessment against these objectives is as follows:

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

Comment:

The revised proposal complies with the MLEP 2013 building height development standard of 8.5m. The proposed roof form and wall height is considered consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality.

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

Comment:

Two-storey dwelling houses of this size and scale, with a technical third floor due to the inclusion of lower ground garages, are characteristic of the area. The revised proposal has been assessed against the requirements and underlying objectives of the MLEP and MDCP and is not considered to propose a dwelling excessive in terms of bulk and scale, considering the reduction of size and height proposed.

(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 revised proposal is not anticipated to have any unreasonable impact on views, and the reduction of the size and height of the building is favorable in terms of view sharing.

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

Comment:

The proposal will not cause excessive overshadowing of adjoining properties or the public domain.

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

Comment:

The development is not within a recreation or environmental protection zone.

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

proposal is supported, in this particular circumstance.

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

Description of non-compliance

The revised proposal complies with the front, side and rear setbacks as stipulated by this control.

However, Clause 4.1.4.2 Side Setbacks and Secondary Street Frontages also requires that no new windows be located within 3m of side boundaries. The proposal includes nine (9). It should be noted that these windows are designed with consideration of privacy.

Merit consideration

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

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

Comment:

The streetscape is not considered to be adversely impacted. Front, side and rear setbacks are compliant. Windows on the side elevations do not compromise the desired streetscape and the built form is similar to that of surrounding development.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The revised proposal is considered to meet the requirements of relevant clauses of the MDCP relating to amenity. The development is not considered to create unreasonable overshadowing on public or private spaces, or to unreasonably impact views from or to public or private spaces. The proposal is also considered to maintain the existing streetscape characteristic and not detrimentally impact on traffic conditions or the privacy of surrounding dwellings.

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

Comment:

The proposed development is not expected to result in any unreasonable amenity impacts on surrounding properties and has demonstrated it meets the underlying objectives of the control. As such, flexibility is warranted, in this instance, particularly considering setbacks are fully compliant, and non-compliance only arise from windows in proximity to side boundaries, which have been designed considering privacy.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposal is compliant with the landscape area provisions of the MDCP and maintains adequate landscaping and vegetation.

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

Comment:

The site is not classified as bush fire prone land.

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

4.1.5 Open Space and Landscaping

Description of non-compliance

The subject site is located within Residential Open Space Area OS3, which requires at least 55% (326.9sqm) of the site to be open space. In addition, at least 35% (105sqm) of the proposed total open space is to be landscaped area. Additionally, no more than 25% (75sqm) of total open space can be provided above ground level.

The proposed development results in a numerically non-compliant total open space of 50.5% (300sqm), presenting a variation of 8.2% (26.9sqm) to the requirement. The site also requires three (3) native / canopy trees, however, two (2) are proposed.

It is noted that the proposal achieves compliance with the landscaped area, exhibiting a total of 81.7% (245sqm), and less than 25% of open space is provided above ground level.

Merit consideration

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

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

Comment:

The proposal will not result in the removal of any significant topographical or landscape features, with the proposed dwelling house located generally over the footprint of the existing dwelling house on the

subject site. Council's Landscape Officer has reviewed the proposal and is supportive, subject to conditions. Furthermore, the landscaped area provided is compliant. In this regard, the proposal retains and augments important landscape features and vegetation.

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

Comment:

The proposal exhibits a compliant landscaped area with dimensions capable of accommodating for any future plantings and maximises open space at ground level.

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

Comment:

The revised proposal does not result in any unacceptable impacts to amenity, including privacy and views. Furthermore, the revised proposal is consistent with the surrounding area and streetscape character.

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

Comment:

An acceptable amount of soft landscaping is provided on site to minimise stormwater runoff and maximise water infiltration. The proposal complies with landscaped area. The proposal has been reviewed Council's Development Engineer, including regard to stormwater, and is supported, subject to conditions.

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

Comment:

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

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

Comment:

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

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

4.4.5 Earthworks (Excavation and Filling)

Description of non-compliance

The maximum depth of excavation on the site is estimated at 2.1m, which exceeds the 1m control specified in Clause 4.4.5 of MDCP 2013.

Merit consideration

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

Objective 1) To retain the existing landscape character and limit change to the topography and vegetation of the Manly Local Government Area by:

- Limiting excavation, "cut and fill" and other earthworks;
- Discouraging the alteration of the natural flow of ground and surface water;
- Ensuring that development not cause sedimentation to enter drainage lines (natural or otherwise) and waterways; and
- Limiting the height of retaining walls and encouraging the planting of native plant species to soften their impact.

Comment:

Despite the exceedance of the control generally limiting excavation to 1m, the size and location of the excavation (adjoining a pre-excavated semi-basement area) is considered to be sufficient to retain the existing landscape character, limit change to the topography and vegetation, and in turn, be consistent with the objectives of the control.

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 \$12,500 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,250,000.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;

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

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

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

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

PLANNING CONCLUSION

This Review of Determination application, which seeks to gain an approval for an amended scheme in response to the refusal of DA2023/0043 for demolition works and construction of a dwelling house, has been referred to the Development Determination Panel (DDP), due to it being a review application under section 8.2 of the Environmental Planning and Assessment Act 1979, requiring determination by the DDP.

Critical assessment issues which made up the reasons for refusal of DA2023/0043 included building height and associated written request to vary a development standard (4.6 Request), streetscape, and wall height / number of storeys.

This assessment finds that the applicant has made suitable amendments to the proposed development, while it still constitutes substantially the same development. This has included a reduction of the proposed building height to 8.43m, compliant with the development standard of 8.5m.

Overall, the development is of quality design and is not expected to result in unreasonable impacts on adjoining or nearby properties or the natural environment.

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 Council as the consent authority grant Development Consent to REV2023/0020 for Review of Determination of Application DA2023/0043 for demolition works and construction of a dwelling house on land at Lot 12 DP 758044, 23 Dobroyd Road, BALGOWLAH HEIGHTS, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

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
A03	U	Site Plan	G.J. Gardner Homes	3 August 2023
A05	U	Garage Floor Plan	G.J. Gardner Homes	3 August 2023
A06	U	Ground Floor Plan	G.J. Gardner Homes	3 August 2023
A07	U	First Floor Plan	G.J. Gardner Homes	3 August 2023
A08	U	Elevations	G.J. Gardner Homes	3 August 2023
A09	U	Elevations	G.J. Gardner Homes	3 August 2023
A10	U	Sections	G.J. Gardner Homes	3 August 2023
A11	U	Demolition Plan	G.J. Gardner Homes	3 August 2023
A12	U	Erosion & Sediment Plan	G.J. Gardner Homes	3 August 2023
A15	U	Driveway Details	G.J. Gardner Homes	3 August 2023
A16	U	Concrete Slab Plan - Ground	G.J. Gardner Homes	3 August 2023
A17	U	Concrete Slab Plan - Garage	G.J. Gardner Homes	3 August 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Landscape Plan, Drawing No. C1	Rev. D	Contour Landscape Architecture	8 March 2023
Stormwater Management Plans, Drawing No. C1, C2, C3, C4	Rev. C	Nastasi & Associates Consulting Civil & Structural Engineers	28 July 2023
BASIX Certificate	1360370S_02	CHAPMAN ENVIRONMENTAL SERVICES PTY LTD	2 August 2023

Geotechnical Comments In Regards To New Plans	J3407C	White Geotechnical Group	27 July 2023
Geotechnical Investigation	J3407B	White Geotechnical Group	6 December 2022
Waste Management Plan - 23 Dobroyd Road, Balgowlah Heights	Sheet A19	G.J. Gardner Homes	3 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 - Clearance Guide	22/08/2023 (on EDMS)
Ausgrid	Ausgrid - Referral Response	22/08/2023 (on EDMS)

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

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

3. **Prescribed Conditions**

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

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

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

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

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

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

Reason: Legislative requirement.

4. General Requirements

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

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the 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 \$12,500.00 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 \$1,250,000.00.

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

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

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

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

6. Security Bond

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

7. On-Site Stormwater Detention Details

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by Nastasi & Associates, job number 33529, drawing number C1, C2, C3, C4, dated 28/7/2023. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has

membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering.

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

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

The recommendations identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the construction certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

9. **Vehicle Crossings Application**

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 3.0 metres wide in accordance with Northern Beaches Council Standard Drawing Normal High 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.

10. **Compliance with Standards**

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

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

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

11. **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. Protection of Rock and Sites of Significance

All rock outcrops outside of the area of approved works, including all the rock outcrop area within the road reserve verge, are to be preserved and protected at all times during demolition excavation and construction works.

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

Reason: Preservation of significant environmental features.

13. Tree and Vegetation Protection

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

- i) all trees within the site, 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,
- 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.

14. 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.

15. Removing, Handling and Disposing of Asbestos

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998)];
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

16. Geotechnical Requirements

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

Reason: To ensure geotechnical risk is mitigated appropriately.

17. Survey Certificate

A survey certificate prepared by a Registered Surveyor 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.

18. Waste Management During Development

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE**19. Landscape Completion**

Landscape works are to be implemented in accordance with the approved Landscape Plan(s) (Landscape Plan, Drawing No. C1, Rev. D, prepared by Contour Landscape Architecture, dated 8 March 2023), and inclusive of the following conditions:

- a) landscape works are to be contained within the legal property boundaries,
- b) all tree planting shall be a minimum pre-ordered planting size of 75 litres; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth generally, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings and other trees or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
- c) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces.

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

Reason: Environmental amenity.

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

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

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

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

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

operational standard.

21. **House / Building Number**

House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

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

22. **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 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.

23. **Geotechnical Recommendations**

Any ongoing recommendations (if any) 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.

DIMENSIONS INCLUDE CLADDING THICKNESS

ATTACHMENT 2
Site Plan and Elevations

ITEM NO. 3.5 - 25 OCTOBER 2023

DRAWING REVISION SCHEDULE			
No.	AMENDMENTS	DATE	BY
A	FIRST ISSUE	25/07/2022	DJH
B	CHANGES TO LETTER DATED 18/08/2022	26/08/2022	MO
C	ALFRESCO DEPTH INCREASED AND 3D VIEW ADDED	30/08/2022	MO
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E	FF ROOF CHANGES TO 12° PITCH	28/09/2022	MO
F	CHANGES AS PER EMAIL 03/11/2022	28/11/2022	DJH
G	STAIR CENTRE, DINING WINDOW, A/C STACKER MOVED TO SYDUEY, LINEN ADJUSTED WITH THE WINDOW CENTRED	15/11/2022	MO
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T	MOVED GROUND FLOOR WALLS; ADDED DOOR TO BED 4; ALTERED ROOF TO SUIT; ADDED BASEMENT STORAGE	24/07/2023	SM
U	UPDATED BASIX	03/08/2023	SM

SETBACK NOTES:

- FRONT SETBACK IS TO BE AT LEAST: 6.00m
- SIDE SETBACK IS TO BE AT LEAST: 1/3 WALL HEIGHT
- REAR SETBACK IS TO BE AT LEAST: 8.0m

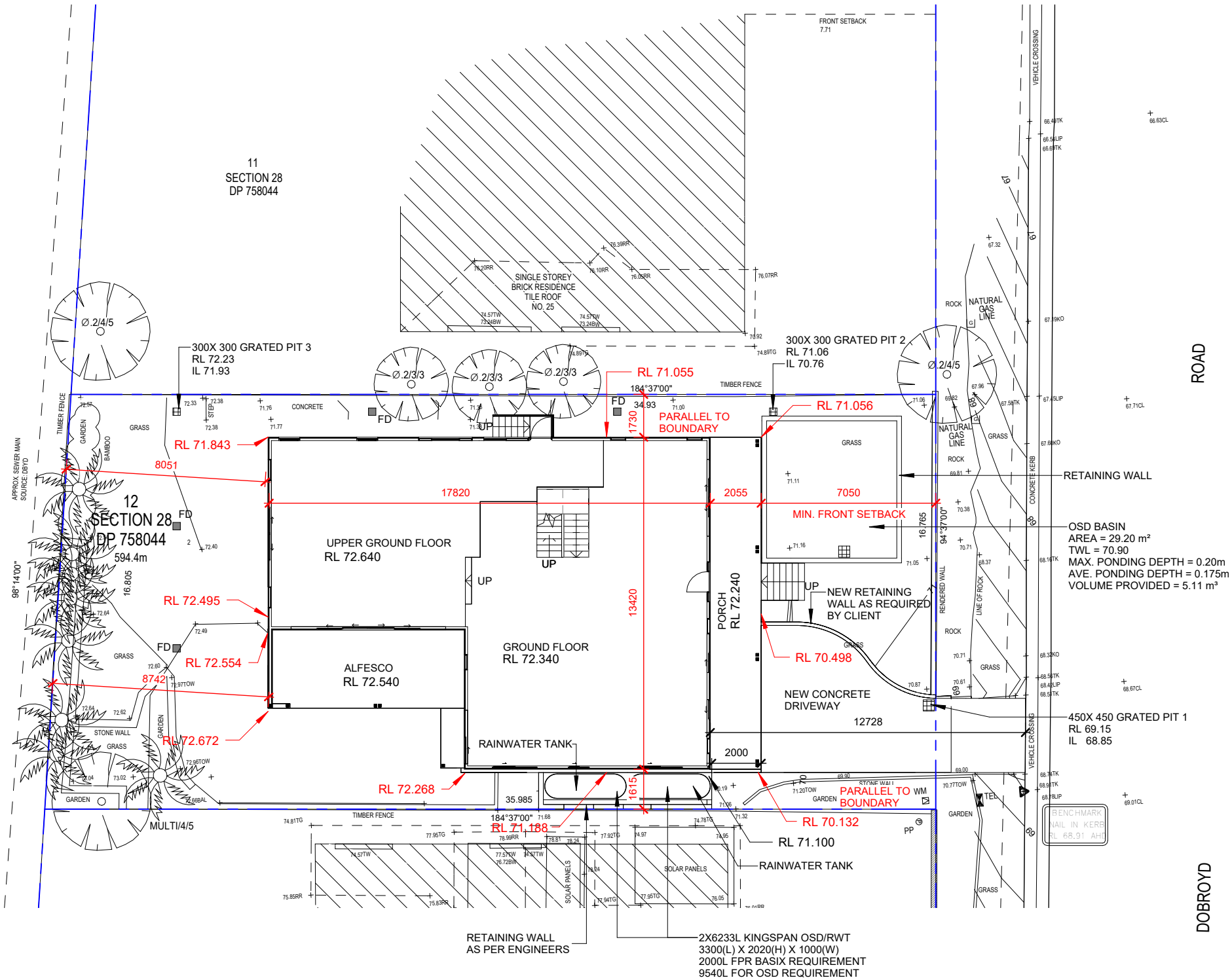
MAX. ALLOWABLE FSR = 0.45	
SITE AREA	FSR
594.4 m ²	0.449

GROSS FLOOR AREAS (GFA)	
HABITABLE AREA	265.8 m ²
HABITABLE AREA (STORAGE ROOM)	1.2 m ²
TOTAL GFA	267.0 m ²

PROPOSED FLOOR SPACES		
AREA NAME	AREA	%
GARAGE		
GARAGE	38.1 m ²	9%
HABITABLE AREA	9.4 m ²	2%
HABITABLE AREA (STORAGE ROOM)	1.2 m ²	0%
STORAGE	26.7 m ²	6%
SUBFLOOR	22.8 m ²	5%
VOID	5.7 m ²	1%

GROUND FLOOR		
ALFRESCO	25.0 m ²	6%
HABITABLE AREA	186.8 m ²	43%
PORCH	29.9 m ²	7%

FIRST FLOOR		
BALCONY	18.1 m ²	4%
HABITABLE AREA	69.6 m ²	16%
VOID	5.7 m ²	1%
TOTAL AREAS	439.2 m ²	100%



1 SITE PLAN
1 : 200

0m 2m 4m 6m 8m 10m 20m
SCALE BAR 1:200

G.J. Gardner.
Builders Details

HOMES

CUSTOM DESIGN

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DRAFTERS:



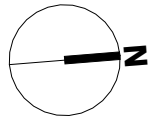
SUITE 302
5 CELEBRATION DRIVE
BELLA VISTA NSW 2153
ABN 15 078 937 238
(02) 8883 4344 kjrdrafting@kjr.net.au

CLIENT: THREE STOREY DWELLING
MARK & ALANNA VALERIO

DRAWING TITLE:
SITE PLAN
SCALE: 1 : 200

PROJECT:
23 DOBROYD ROAD
BALGOWLAH HEIGHTS NSW
2093

SHEET SIZE: A3
SHEET No: A03
REVISION: U
DATE: 03/08/2023
JOB NO: 230369
STAGE: DA
DRAWN: DJH
GJGN202



IWE HAVE CHECKED THE PLANS AND AGREE THEY ACCURATELY
DEPICT THE HOUSE FOR CONSTRUCTION. ANY VARIATIONS
REQUESTED AFTER SIGNING WILL INCUR A PROCESSING FEE IN
ADDITION TO THE COST OF THE VARIATION ITEM/S AND ANY
FURTHER PLANS TO BE PREPARED.

OWNER SIGNED: DATE:
OWNER SIGNED: DATE:
BUILDER SIGNED: DATE:

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REFER TO SPECIFICATION FOR COLOUR SELECTION, FINAL LAYOUT & FINISHES OF BATHROOM AND LAUNDRY

WALL & ROOF CLADDING.

WALL AND ROOF CLADDING TO BE COMPLIANT WITH THE REQUIREMENTS OF NCC 2019 Vol 2 Pt 3.5 OF THE BUILDING CODE OF AUSTRALIA PARTICULARLY WITH RESPECT TO THE REFERENCING ACCEPTABLE CONSTRUCTION PRACTICE AS DETAILED IN THE BCA FOR PRODUCT MATERIALS AND INSTALLATION.
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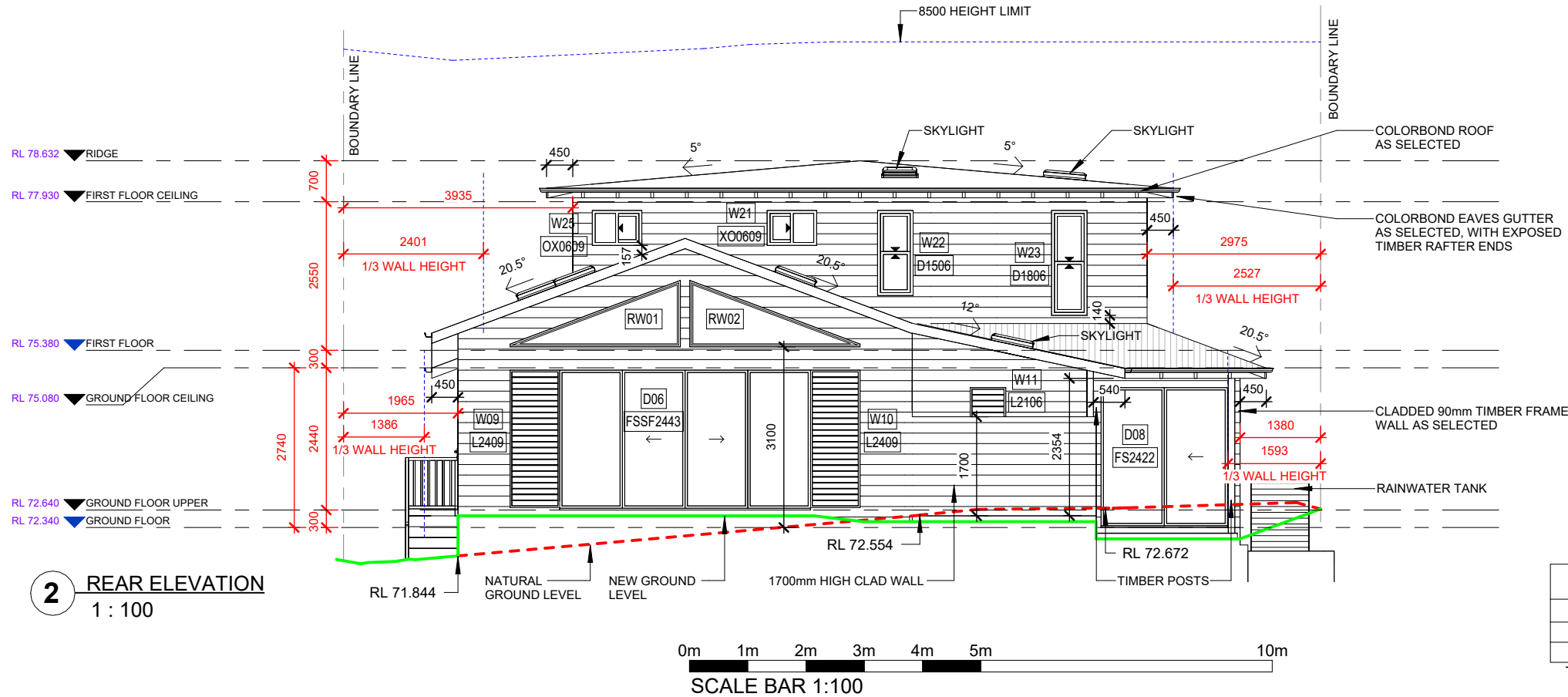
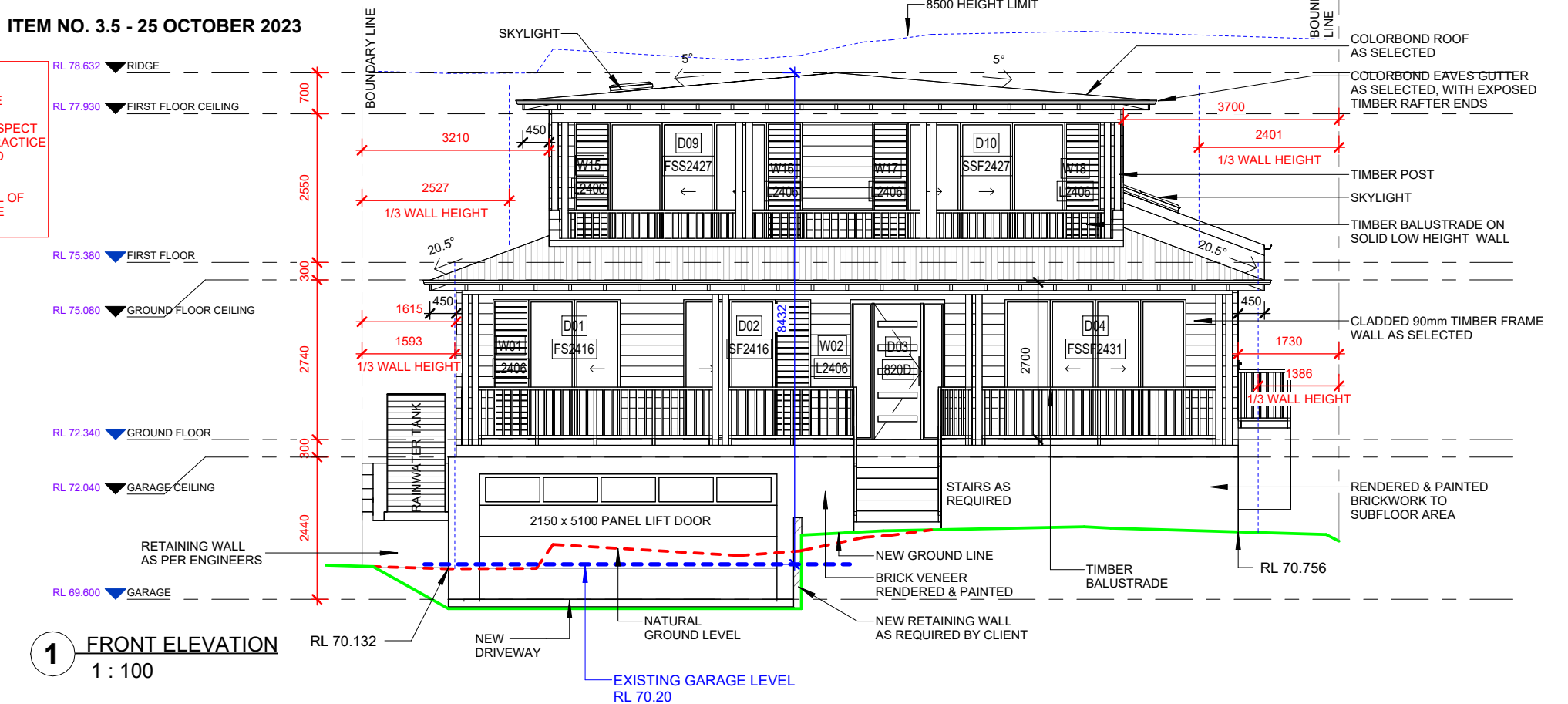
BALUSTRADES - NCC/BCA Part 3.9

NO HORIZONTAL ELEMENTS TO FACILITATE CLIMBING BETWEEN 150mm TO 760mm WHERE FLOOR TO FLOOR LEVEL BELOW IS MORE THAN 4 METRES.

WINDOWS

PROVIDE 1.7m SILL HEIGHT OR CHILD SAFE LOCKS / SCREENS TO COMPLY WITH NCC/BCA Part 3.9.2

ATTACHMENT 2 Site Plan and Elevations ITEM NO. 3.5 - 25 OCTOBER 2023



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M	CHANGES TO LETTER DATED 26/04/2023	27/04/2023	MO
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U	UPDATED BASIX	03/08/2023	SM

WINDOW SCHEDULE			
MARK	WIDTH	HEIGHT	HEAD HT
W01	610	2360	2400
W02	610	2360	2400
W03	610	2060	2400
W04	610	2060	2400
W05	1810	600	1550
W06	2170	600	1550
W07	850	1460	2400
W08	850	1460	2400
W09	850	2360	2400
W10	850	2360	2400
W11	610	2060	2400
W12	1810	600	2400
W13	850	600	2400
W14	1810	600	2400
W15	610	2360	2400
W16	610	2360	2400
W17	610	2360	2400
W18	610	2360	2400
W19	1210	860	2400
W20	1570	1030	2400
W21	850	600	2400
W22	610	1460	2400
W23	610	1800	2400
W24	2170	600	2400
W25	850	600	2400
Grand Total: 25			

DOOR SCHEDULE		
MARK	WIDTH	HEAD HT
D01	1570	2430
D02	1570	2430
D03	820	2400
D04	3104	2430
D05	820	2400
D06	4304	2430
D07	6246	2430
D08	2170	2430
D09	2688	2430
D10	2688	2430
Grand Total: 10		

RAKED WINDOW SCHEDULE				
Mark	Sill Height	Width	Height	Top Angle
RW01	2828	2865	1071	20.50°
RW02	2828	2865	1071	20.50°
Total Windows: 2				

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G.J. Gardner. HOMES
Builders Details

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DRAFTERS:
KJR
SUIITE 302
5 CELEBRATION DRIVE
BELLA VISTA NSW 2153
ABN 15 078 937 238
(02) 8883 4344 kjrdrafting@kjr.net.au

CLIENT: THREE STOREY DWELLING
MARK & ALANNA VALERIO
DRAWING TITLE:
ELEVATIONS
SCALE: 1 : 100

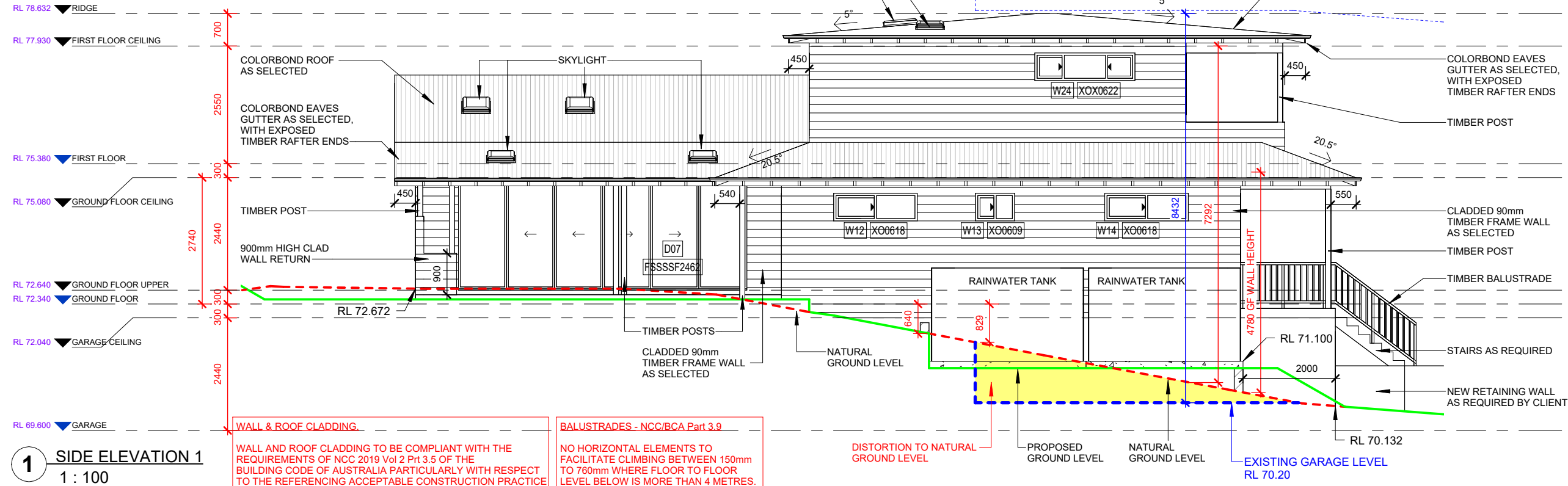
PROJECT:
**23 DOBROYD ROAD
BALGOWLAH HEIGHTS NSW
2093**

SHEET SIZE: **A3** SHEET No: **A08** REVISION: **U**
DATE: **03/08/2023**
JOB NO: 230369 STAGE: DA
DRAWN: DJH GJGN202

IWE HAVE CHECKED THE PLANS AND AGREE THEY ACCURATELY
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OWNER SIGNED: DATE: OWNER SIGNED: DATE: BUILDER SIGNED: DATE:

REFER TO SPECIFICATION FOR
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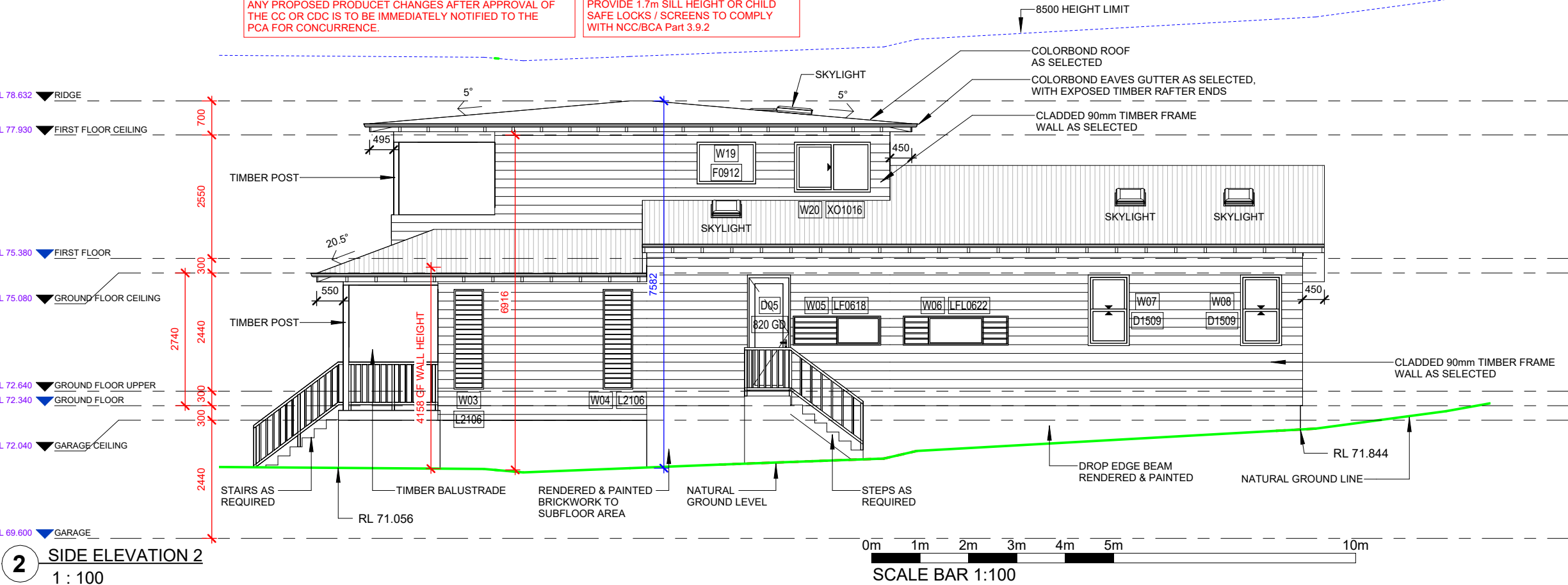
ATTACHMENT 2
Site Plan and Elevations
ITEM NO. 3.5 - 25 OCTOBER 2023



1 SIDE ELEVATION 1
1 : 100

WALL & ROOF CLADDING.
WALL AND ROOF CLADDING TO BE COMPLIANT WITH THE REQUIREMENTS OF NCC 2019 Vol 2 Pt 3.5 OF THE BUILDING CODE OF AUSTRALIA PARTICULARLY WITH RESPECT TO THE REFERENCING ACCEPTABLE CONSTRUCTION PRACTICE AS DETAILED IN THE BCA FOR PRODUCT MATERIALS AND INSTALLATION.
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WINDOWS
PROVIDE 1.7m SILL HEIGHT OR CHILD SAFE LOCKS / SCREENS TO COMPLY WITH NCC/BCA Part 3.9.2



2 SIDE ELEVATION 2
1 : 100

DRAWING REVISION SCHEDULE

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W07	850	1460	2400
W08	850	1460	2400
W09	850	2360	2400
W10	850	2360	2400
W11	610	2060	2400
W12	1810	600	2400
W13	850	600	2400
W14	1810	600	2400
W15	610	2360	2400
W16	610	2360	2400
W17	610	2360	2400
W18	610	2360	2400
W19	1210	860	2400
W20	1570	1030	2400
W21	850	600	2400
W22	610	1460	2400
W23	610	1800	2400
W24	2170	600	2400
W25	850	600	2400

Grand Total: 25

DOOR SCHEDULE

MARK	WIDTH	HEAD HT
D01	1570	2430
D02	1570	2430
D03	820	2400
D04	3104	2430
D05	820	2400
D06	4304	2430
D07	6246	2430
D08	2170	2430
D09	2688	2430
D10	2688	2430

Grand Total: 10

RAKED WINDOW SCHEDULE

Mark	Sill Height	Width	Height	Top Angle
RW01	2828	2865	1071	20.50°
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Total Windows: 2

G.J. Gardner. HOMES
Builders Details

CUSTOM DESIGN

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TO G.J. GARDNER HOMES

DRAFTERS:



SUITE 302
5 CELEBRATION DRIVE
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ABN 15 078 937 238
(02) 8883 4344 kjrdrafting@kjr.net.au

CLIENT: THREE STOREY DWELLING
MARK & ALANNA VALERIO

DRAWING TITLE:
ELEVATIONS
SCALE: 1 : 100

PROJECT:
23 DOBROYD ROAD
BALGOWLAH HEIGHTS NSW
2093

SHEET SIZE: A3
SHEET No: A09
REVISION: U
DATE: 03/08/2023
JOB NO: 230369
STAGE: DA
DRAWN: DJH
GJGN202

I/WE HAVE CHECKED THE PLANS AND AGREE THEY ACCURATELY
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ADDITION TO THE COST OF THE VARIATION ITEM/S AND ANY
FURTHER PLANS TO BE PREPARED.
OWNER SIGNED: DATE:
OWNER SIGNED: DATE:
BUILDER SIGNED: DATE:

ITEM 3.6	DA2023/0643 - 44 SUNRISE ROAD PALM BEACH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Steve Findlay
TRIM FILE REF	2023/670138
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations 3 ↓ Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of PLEP 2014 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2023/0643 for alterations and additions to a dwelling house on land at Lot 1 DP 505171 & Lot 334 DP 734511, 44 Sunrise Road PALM BEACH, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0643
----------------------------	-------------

Responsible Officer:	Kye Miles
Land to be developed (Address):	Lot 1 DP 505171, 44 Sunrise Road PALM BEACH NSW 2108 Lot 334 DP 734511, 44 Sunrise Road PALM BEACH NSW 2108
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Susan Davinia Hadley
Applicant:	Thos. Hamel Pty Limited

Application Lodged:	31/05/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	07/06/2023 to 21/06/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 28.6%
Recommendation:	Approval

Estimated Cost of Works:	\$ 1,122,000.00
---------------------------------	-----------------

EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) due to the application proposing a greater than 10% variation to the Height of Buildings development standards.

The 4.6 request for the non-compliance with height standard arises from the site being previously excavated to allow for the existing lower ground floor. The changes to the windows and

sliding door within the existing building create the additional non-compliance. Specifically, the new window represents a 28.6% variation to the height of buildings development standard. Based on extrapolated natural ground levels, the height would measure a maximum of 8.0metres. The remaining works are well under the 8.5 metre height.

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

PROPOSED DEVELOPMENT IN DETAIL

Development application for alterations and additions to an existing dwelling house. Specifically, the works include:

Level 1:

- Eastern extension to provide new gym;
- Changes to windows and openings as indicated on the elevations;
- Internal alterations; and,
- Construction of a new pool deck.

Level 2:

- Construction of a new enclosed entry;
- Changes to windows and openings as indicated on the elevations;
- Construction of new pergola over existing balcony;
- Eastern extension to kitchen; and,
- Internal alterations.

Level 3:

- Internal alterations; and
- Changes to windows and openings as indicated on the elevations.

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.

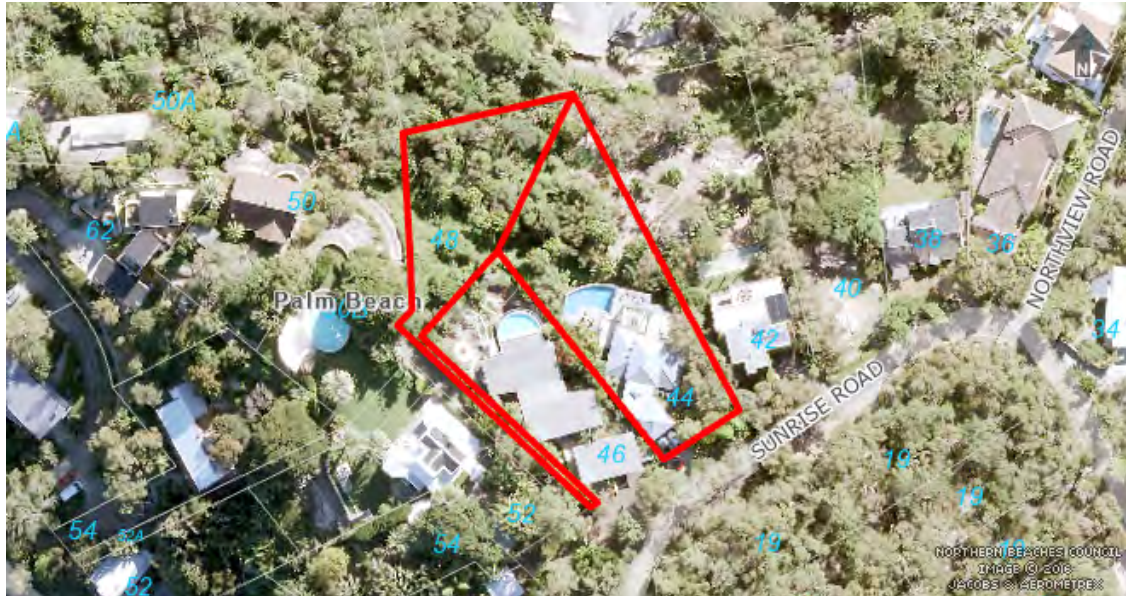
SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater 21 Development Control Plan - D12.6 Side and rear building line

SITE DESCRIPTION

Property Description:	Lot 1 DP 505171 , 44 Sunrise Road PALM BEACH NSW 2108 Lot 334 DP 734511 , 44 Sunrise Road PALM BEACH NSW 2108
Detailed Site Description:	The subject site consists of two (2) allotments, namely: • Lot 1 DP 505171 • Lot 334 DP 734511 The irregular shaped allotments are located on the northern side of Sunrise Road. Lot 1 is an irregular shaped allotment and contains the principal dwelling that is three stories. The site also includes an attached garage and an above-ground swimming pool. Lot 334 is battle axe shaped vacant allotment that contains ancillary landscaping work and vegetated areas. The site has a total surveyed area of 3101m². The site is located within the C4 Environmental Living zone as identified under the Pittwater LEP 2014. The site slopes to the northeast with an approximate fall of 30 metres The northern portion of the site is heavily vegetated. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by two and three storey detached dwellings.

Map:



SITE HISTORY

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

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent.

Section 4.15 Matters for Consideration	Comments
Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	These matters have been addressed via a condition of consent. <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 a geotechnical report. <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. <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. <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.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in 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 07/06/2023 to 21/06/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The application seeks consent for alterations and additions to a dwelling house. The plans and Statement of Environmental Effects indicate that no significant landscape features are impacted by the proposed works. No trees are to be removed. No objections are raised with regard to landscape issues subject to conditions.
NECC (Bushland and Biodiversity)	Council's Bushland and Biodiversity Referrals Team have assessed the Development Application against the following applicable provisions: • Biodiversity Conservation Act 2016 (BC Act) • Pittwater LEP 2014 cl. 7.6 Biodiversity Protection • Pittwater 21 DCP cl. B4.2 Flora and Fauna Conservation Category 1 and Wildlife Corridor • Pittwater 21 DCP cl. B4.4 Flora and fauna Habitat Enhancement Category 2 and Wildlife Corridor The Development Application seeks consent for alterations and additions to a dwelling house. The proposed alterations take place within existing developed areas and as such there is no requirement for the removal of any trees or vegetation. As such, the development is designed, sited and will be managed to avoid any significant adverse environmental impact.
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	The proposal has been referred to Heritage as the subject site is within proximity to heritage items Sunrise Hill Heritage Conservation Area - 50-60 and 35 Sunrise Road 'Windyridge' (house) - 50 and 50B Sunrise Road
	Details of heritage items affected

Internal Referral Body	Comments		
	Sunrise Hill Heritage Conservation Area <u>Statement of Significance</u> The Sunrise Hill Heritage Conservation Area includes the curtilage of a number of historic properties representing the earliest phase of residential development at Palm Beach.		
	Windyridge <u>Statement of Significance</u> "Windyridge", built in 1919 to the design of Wilshire and Day and built by Charles Verrills as a holiday house and modified by his son Frederick Verrills, has historic and aesthetic significance as a good example of vernacular weekender typical of the early Pittwater subdivisions.		
	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		
The proposal seeks consent for alterations and additions to a dwelling. This includes a new rear pergola, kitchen extension, entrance hall, pool fence, internal layout reconfiguration and changes to windows and doors as well as solar panels. The conservation area is located directly adjoining the property on Sunrise Road. Windyridge is located to the west of the property but adjoins the larger site due to the subdivision pattern of Lot 334. Changes to the appearance of the dwelling from Sunrise Road are considered to not impact upon the conservation area or its significance due to the change in elevation and their relatively minor increase in the dwelling's built form. The proposal is also considered to not impact upon Windyridge as works are restricted to the dwelling on Lot 1 and no works are proposed to Lot 334 which adjoins this item. Therefore Heritage raises no objections and requires no conditions. Consider against the provisions of CL5.10 of PLEP.			

Internal Referral Body	Comments
	Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No

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

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. A489249 dated 22

May 2023).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

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
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Height of Buildings:	8.5m	10.93m	28.6%	No
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Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone C4 Environmental Living

The underlying objectives of the C4 Environmental Living zone

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

Comment:

The proposed development will retain the low density character of the locality, while the works will be built primarily upon existing building footprint and will not result in the removal of significant vegetation or require significant alteration to the landform.

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

Comment:

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

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

Comment:

The proposed development does not dominate the natural environment and is consistent with the low-density character prevalent within the streetscape. The proposal does not involve the removal of any native species, nor will it unreasonably disrupt existing topographical features. Overall, it is considered that the proposal successfully achieves a 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:

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

Conclusion:

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

4.6 Exceptions to development standards

Description of Non-compliance

Development standard:	Height of Buildings
Requirement:	8.5m
Proposed:	10.93m
Percentage variation to requirement:	28.6%

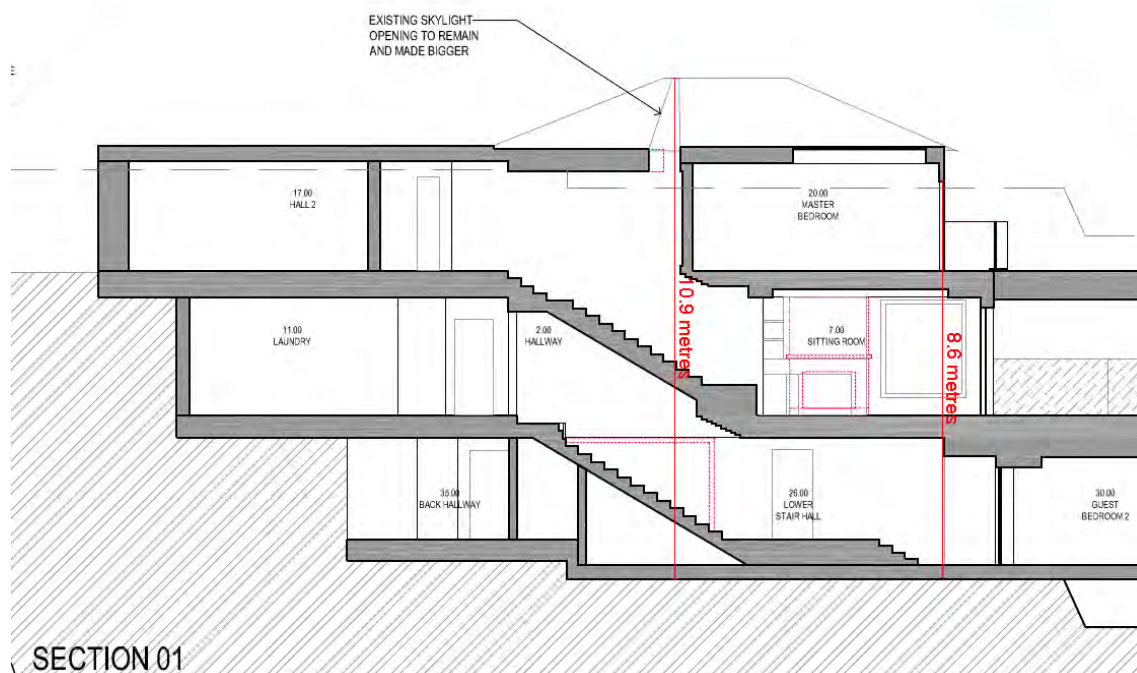


Figure 1. Building height non-compliance

Assessment of Request to vary a Development Standard

The following assessment of the variation to Clause 4.3 - Height of Buildings development standard, has taken into consideration the 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 doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act (cf previous s 5)

The objects of this Act are as follows:

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

Applicants Written Request

The applicants written request argues, in part:

- *The building height non-compliance is a function of the existing development on-site, with the dwelling being constructed prior to the implementation of the current applicable height standard.*
- *The proposed works above the building height standard will be contained within the existing building envelope.*
- *The proposed variation to the height standard will enable upgrading works to be undertaken to the existing dwelling, which will improve natural light and ventilation to the upper level, and the longevity of the built form.*
- *Further, as the proposed works above the height standard remain within the overall external envelope and below the existing maximum height, no additional height to the existing built form is proposed.*

Planner's Comment

The applicants argument is agreed with in relation to the works being consistent with the objectives and strict compliance with the control in these circumstances is considered unnecessary. The breach to the development standard is a technicality, insofar that the overall height of the building does not increase.

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the C4 Environmental Living zone. An assessment against these objectives is provided below.

Objectives of Development Standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the PLEP

2014 are:

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

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

Comment:

The proposed building height is deemed appropriate is deemed to be reasonable given the application is only proposed to include skylights in the existing roof form and the replacement of existing sliding doors. The development is predominantly beneath the maximum permissible height limit as evident on the architectural plans, and overall achieves a building height that is consistent with other residential dwelling along Sunrise Road.

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

Comment:

The bulk and scale of the development is consistent with nearby development and will not result in any unreasonable impacts within the locality. The proposed bulk and scale is satisfactory in this circumstance. The predominant compliance achieved by the building demonstrating a considered built form that is compatible with any future development on surroundings lands.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The solar impacts of this aspect of the development are minimal and acceptable in terms of the impacts on habitable rooms and private open space of the adjoining properties. In this regard, the proposal satisfies requirements of Clause C1.4 Solar Access of the Pittwater 21 DCP.

d) to allow for the reasonable sharing of views,

Comment:

The proposal will allow for a reasonable sharing of views.

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

Comment:

The works above the height limit are within the existing dwelling footprint and will not require additional land disturbance. Overall, the proposal respond's sensitively to the natural topography.

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

Comment:

The development's design creates additional articulation, and visual interest and the dwelling is

sufficiently set back from the boundaries such that the visual impact of the building will be appropriately managed.

Zone Objectives

The underlying objectives of the C4 Environmental Living zone:

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

Comment:

The design of the proposal is considered a sensitive response to the natural topography of the site, as the works will be relatively contained within the footprint of the existing dwelling. Additionally, the proposal's design is symptomatic of the traditional architectural styles seen throughout the Palm Beach locality. Amenity to adjoining properties is maintained and as adequate building separation is preserved.

It is considered that the development satisfies this objective.

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

Comment:

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

It is considered that the development satisfies this objective.

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

Comment:

The proposed development does not dominate the natural environment and is maintaining established character prevalent within the streetscape. The proposal does not involve the removal of any native species, nor will it unreasonably disrupt existing topographical features. Overall, it is considered that the proposal successfully achieves a residential development of a low density and scale integrated with the landform and landscape.

It is considered that the development satisfies this objective.

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

Comment:

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

It is considered that the development satisfies this objective.

Conclusion:

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

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

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

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

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	6.9m (Water feature)	N/A	Yes
Rear building line	6.5m	51.0m (Level 2 Pergola)	N/A	Yes
Side building line	2.5m - East	2.3m (Level 1 Gym) 1.5m (Level 2 Pergola)	8% 40%	No No
	1m - West	1.0m (Existing)	N/A	N/A
Building envelope	3.5m - East	Within envelope	N/A	Yes
	3.5m - West	Within envelope	N/A	Yes
Landscaped area	60%	76% (2,369sqm)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B4.2 Flora and Fauna Conservation Category 1 and Wildlife Corridor	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
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
C1.17 Swimming Pool Safety	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	Yes	Yes
D12.6 Side and rear building line	No	Yes
D12.8 Building envelope	Yes	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D12.12 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

D12.6 Side and rear building line

Description of non-compliance

The DCP requires a side setback of 1 metres to one side, 2.5 metres to the other side.

The proposal provides a varied setbacks between 1.5 metres and 2.3 metres to the eastern side boundary resulting in a maximum variation of 40% with the 2.5 metre requirement.

The site is highly irregular in shape and has a number of site constraints to design around including the steep gradient of the land. In addition, the proposed pergola will be constructed above the existing terrace, which is sited 1.5 metres from the eastern boundary. The variation to the setbacks is diagrammatically displayed below.

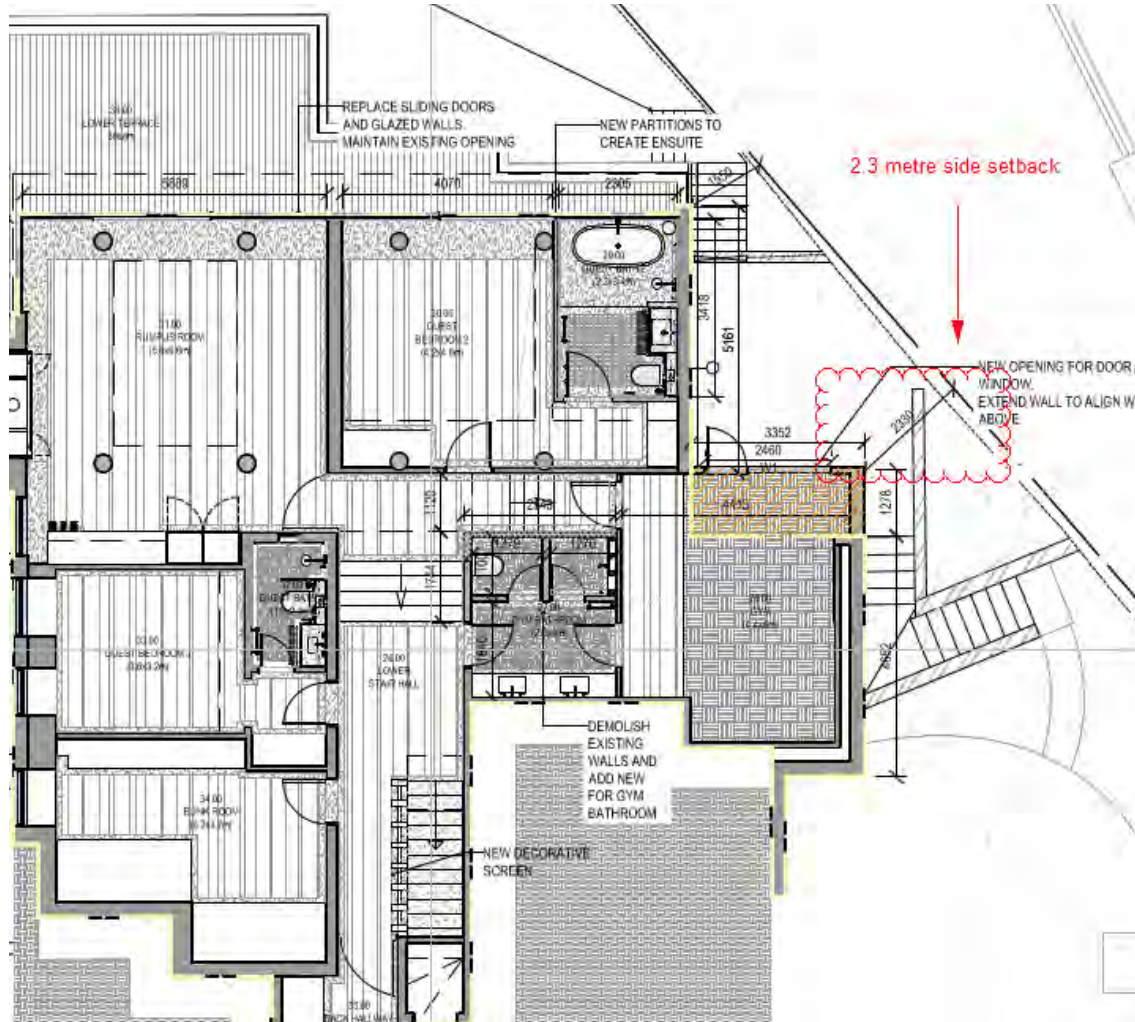


Figure 2. L1 gym side setback non-compliance.

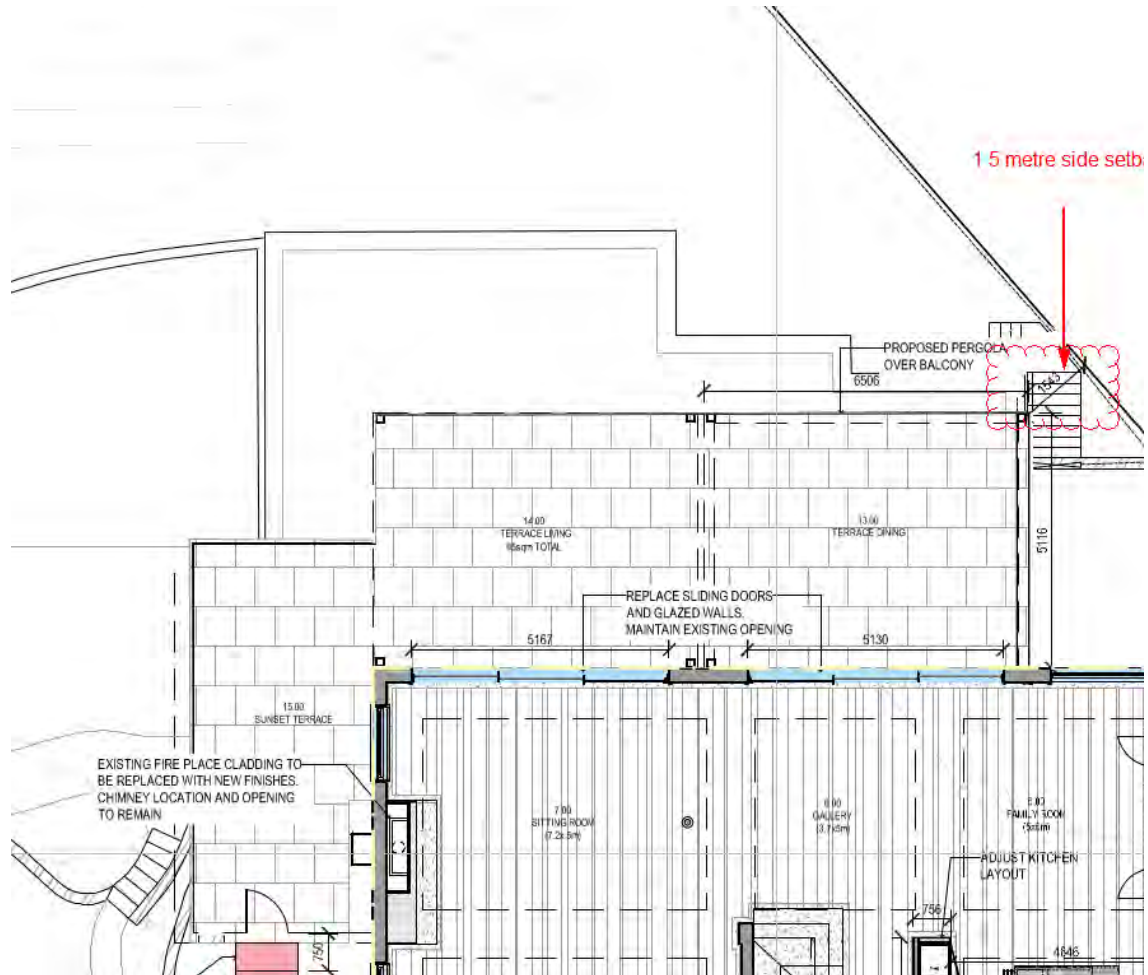


Figure 3. L2 pergola side setback non-compliance.

Merit consideration

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

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

Comment:

As discussed throughout this report, the desired future character of the area is considered to be achieved.

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

Comment:

Notwithstanding the setback non-compliances the proposal is highly articulated within a

landscaped setting which is integrated and designed to respect the natural site features including significant canopy trees on the site and sandstone rock formations. It is also noted that the non-compliant elements that adjoin the boundary on reduced setback will not result in any adverse building, as these works low-lying and contained within the prescribed envelope. The proposal is therefore an appropriate response to bulk and scale for the site.

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

Comment:

The proposal will not result in the loss of views.

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

Comment:

As noted above, no views are to be compromised by the proposed works.

- *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 retains a reasonable level of privacy for adjoining properties, as adequate building separation is retained. The adjoining properties retain solar access in accordance with the DCP controls.

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

Comment:

The proposed development does not involve the removal of any significant vegetation and will allow for substantive landscaping across the site. Council's Landscape Officer has reviewed the proposal and is supportive of the proposal, subject to recommended conditions.

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

Comment:

The development has been sited appropriately in accordance with the site constraints and the surrounding residential context, ensuring reasonable amenity can be maintained for the dwelling occupants and those of adjoining and surrounding properties. Reasonable site access is maintained.

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

Comment:

The proposal does not involve any significant landscaping works and the subject site will remain substantially vegetated.

- *To ensure a landscape 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 consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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 \$11,220 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,122,000.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

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

a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and

b) There are sufficient environmental planning grounds to justify the contravention.

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

PLANNING CONCLUSION

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

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

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

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

Accordingly, the application is referred to the DPP with a recommendation for approval. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2023/0643 for Alterations and additions to a dwelling house on land at Lot 1 DP 505171, 44 Sunrise Road, PALM BEACH, Lot 334 DP 734511, 44 Sunrise Road, PALM BEACH, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

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
0.01 - Issue A: Site plan	23 May 2023	Thomas Hamel & Associates
0.02 - Issue A: Demolition plans	23 May 2023	Thomas Hamel & Associates
0.10 - Issue A: Roof plan	23 May 2023	Thomas Hamel & Associates
0.11 - Issue A: L1 floor plan	23 May 2023	Thomas Hamel & Associates
0.12 - Issue A: L2 floor plan	23 May 2023	Thomas Hamel & Associates
0.13 - Issue A: L3 floor plan	23 May 2023	Thomas Hamel & Associates
0.20 - Issue A: Elevations	23 May 2023	Thomas Hamel & Associates
0.30 - Issue A: Sections	23 May 2023	Thomas Hamel & Associates
Materials and finishes - Page 1	Not dated	Thomas Hamel & Associates
Materials and finishes - Page 2	Not dated	Thomas Hamel & Associates

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By

BASIX Certificate No. A489249	22 May 2023	Thomas Hamel & Associates
Geotechnical Report	28 July 2023	

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	29 May 2023	Listed applicant

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

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

2. **Compliance with Other Department, Authority or Service Requirements**

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	7 June 2023
Aboriginal Heritage Office	AHO Referral Response	26 July 2023

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

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

3. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal 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 \$11,220.00 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 \$1,122,000.00.

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

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

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

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

6. **Security Bond**

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

7. **No Clearing of Vegetation**

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

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

Reason: To protect native vegetation.

8. **Stormwater Drainage Disposal**

The stormwater drainage systems for the development are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.

All stormwater drainage systems must comply with the requirements of Council's Water Management for Development Policy. Any recommendations identified within a Geotechnical Report relevant to the development are to be incorporated into the design of the stormwater drainage system. Details demonstrating compliance from a qualified and practising Civil Engineer and where relevant a Geotechnical Engineer must be submitted to and approved by the Certifier prior to the issue of a Construction Certificate.

When the proposed discharge point for the development in this consent cannot strictly comply with the Water Management for Development Policy, the Applicant must apply to verify the proposed discharge point by gaining Council approval via a Stormwater Drainage Application. Council approval must be provided to the Certifier prior to the issue of a Construction Certificate when a Stormwater Drainage Application is required. The Stormwater Drainage Application form can be found on Council's website.

Compliance with this condition must not result in variations to the approved development or additional tree removal.

Reason: To ensure satisfactory management of stormwater.

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

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

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

10. **Compliance with Standards**

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

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

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

11. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range (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.

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

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

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

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

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

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

DURING BUILDING WORK

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

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

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

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

Reason: Preservation of significant environmental features.

14. **Tree and Vegetation Protection**

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

- i) all trees within the site,
- ii) all trees and vegetation located on adjoining properties,
- iii) all trees and vegetation within the road reserve.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,

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

The Principal Certifier must ensure that:

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

Reason: Tree and vegetation protection.

15. 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 with minimum AQF Level 5 in arboriculture during the works.

b) 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.

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

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

Reason: Protection of trees.

16. **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.

17. **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.

18. **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.

19. **Survey Certificate**

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

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

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

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

Prior to any works commencing on site, including demolition, sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and

Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

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

21. **Waste Management During Development**

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

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

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

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

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

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

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

23. **Stormwater Drainage Disposal Certification**

Certification from an appropriately qualified and practising Civil Engineer demonstrating the stormwater drainage systems have been designed and installed in accordance with the requirements of Council's Water Management for Development Policy and where relevant a Geotechnical Engineer shall be provided to the Principal Certifier prior to the issue of an Occupation Certificate, and;

If any on site stormwater detention system is installed the Applicant shall lodge the Legal Documents Authorisation Application with Council.

The application is to include the completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification. A guide to the process and associated Legal Document Authorisation Application form can be found on Council's website. The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater detention system within this development consent.

The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the authority to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user for the on-site stormwater detention system is to be submitted.

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

issue of an Occupation Certificate.

Reason: To ensure satisfactory management of stormwater.

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

The Applicant is to submit the completed Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) to the Principal Certifier prior to issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

25. **Waste Management Confirmation**

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

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

26. **Swimming Pool Requirements (existing pool modified by works)**

The existing onsite Swimming Pool / Spa fencing enclosure shall be upgraded to comply with:

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

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018;
- (iv) Australian Standard AS1926 Swimming Pool Safety;
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools;
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

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

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

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

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

Reason: To protect human life.

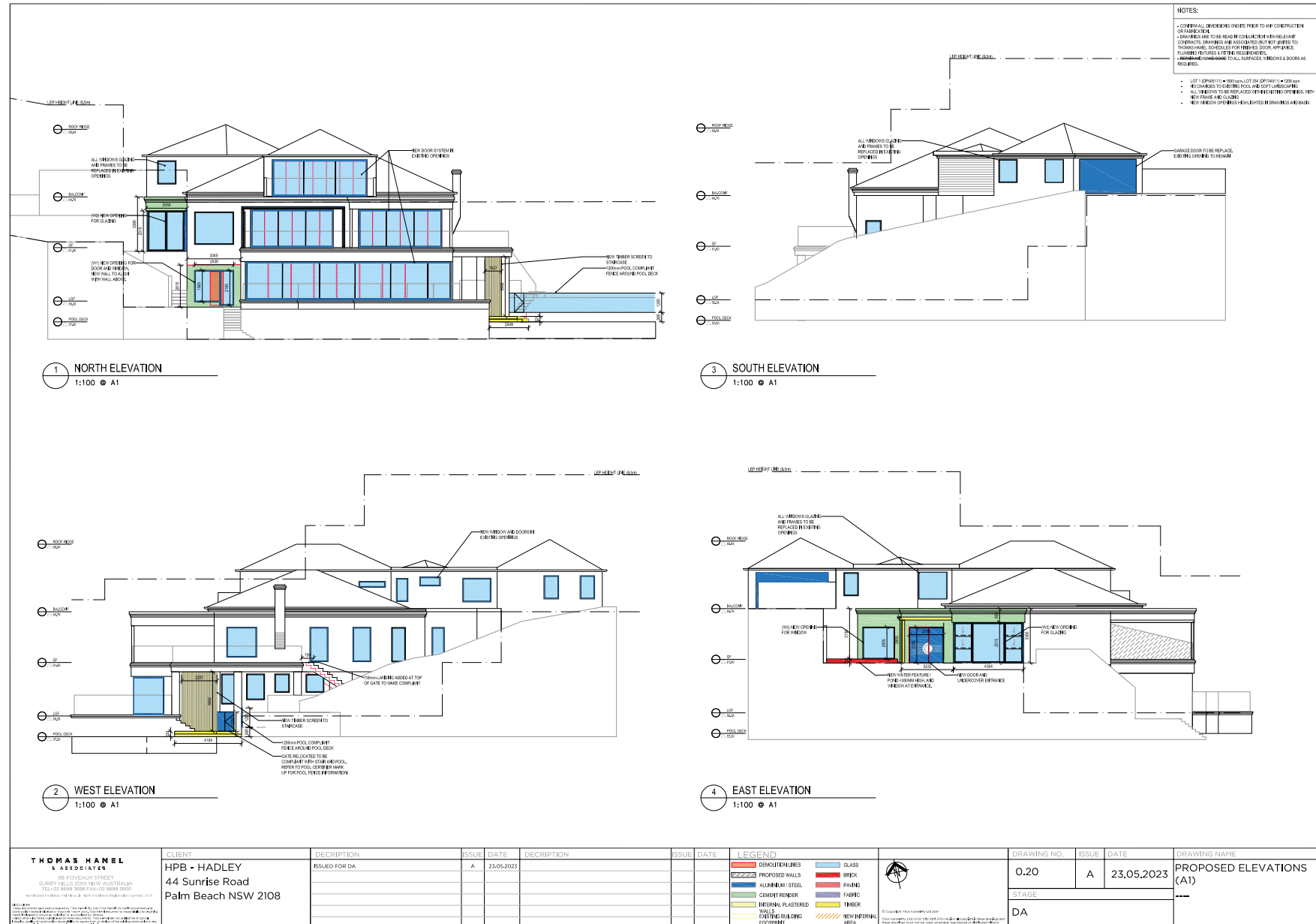
ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

27. **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.







Pittwater LEP 2014 Clause 4.6 Exceptions to Development Standards – Building Height

Alterations and Additions to an Existing Dwelling at

No. 44 Sunrise Road, Palm Beach

Prepared for:

Thomas Hamel & Associates

98 Foveaux Street

Surry Hills NSW 2010

Prepared by:

GSA PLANNING

Urban Design, Environmental & Traffic Planners

(A.B.N 89 643 660 628)

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JOB NO. 23053

April 2023

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**PITTWATER LOCAL ENVIRONMENTAL PLAN (LEP) 2014
CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS**

APPLICANT'S NAME: Thomas Hamel & Associates

SITE ADDRESS: No. 44 Sunrise Road, Palm Beach

PROPOSAL: Alterations and additions to an existing dwelling

1. (i) Name of the applicable planning instrument which specifies the development standard:

Pittwater Local Environmental Plan (LEP) 2014

(ii) The land is zoned:

C4 Environmental Living. The objectives of the C4 Environmental Living Zone are as stated:

- 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.

(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 ensure that any building, by virtue of its height and scale, is consistent with the desired future 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 building height shown for the land on the Height of Buildings Map.
- (2A) Despite clause (2), development on land–
 - (a) At or below the flood planning level or identified as “Coastal Erosion/Wave Inundation” on the Coastal Risk Planning Map, and
 - (b) That has a maximum building height of 8.5 metres shown for that land on the Height of Buildings Map, may exceed a height of 8.5m, but not be more than 8 metres above the flood planning level.
- (2B) Despite subclause (2), development on area of land–
 - (a) At or below the flood planning level or identified as “Coastal Erosion/Wave inundation” on the Coastal Risk Planning Map, and
 - (b) That has a maximum building height of 11 metres shown for that land on the Height of Buildings Map, may exceed a height of 11 metres, but not be more than 10.5 metres above the flood planning level.

- (2C) Despite subclause (2), development on an area of land shown in Column 1 of the table to this subclause and identified as such on the Height of Buildings Map, may exceed the maximum building height shown on the Height of Buildings Map for that land, if the height of the development is not greater than the height shown in the opposite that area in Column 2.

Column 1	Column 2
Area	Maximum height above the flood planning level
Area 1	11.5 metres
Area 2	8.5 metres on the street frontage and 10.5 metres at the rear
Area 3	8.5 metres
Area 4	7 metres

- (2D) Despite subclause (2), development on land that has a maximum building height of 8.5 metres shown for that land on the Height of Buildings Map may exceed a height of 8.5 metres, but not more than 10 metres if-
- (a) The consent authority is satisfied that the portion of the building above the maximum height shown on that land on the Height of Buildings Map is minor, and
 - (b) The objectives of this clause are achieved, and
 - (c) The building footprint is situated on a slope that is in excess of 16.7 degrees (that is 30%), and
 - (d) The building are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.
- (2E) Despite subclause (2), development for the purposes of shop top housing on land identified as "Area 5" on the Height of Buildings Map may have a height up to 10 metres if the top floor of the building is setback a minimum of 6 metres from the boundary to the primary street frontage.
- (2F) Despite subclause (2), development on land identified as "Area 6" on the Height of Buildings Map must not exceed 8.5 metres within the area that is 12.5 metres measured from the boundary of any property fronting Orchard Street, Macpherson Street, Warriewood Road or Garden Street.
- (2FA) Despite subclause (2), the maximum height for a secondary dwelling or a rural worker's dwelling in Zone E4 Environmental Living or Zone RU2 Rural Landscape is 5.5 metres if the secondary dwelling or rural worker's dwelling is separate from the principal dwelling.
- (2FB) Despite subclause (2), in the case of a dual occupancy (detached), the maximum height for the dwelling that is furthest back from the primary street frontage of the lot is 5.5 metres.
- (2G) In this clause-
- flood planning level* means the level of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metres freeboard, or other freeboard determined by an adopted floodplain risk management plan.
- floodplain risk management plan* has the same meaning as it has in the Floodplain Development Manual (ISBN 0 7347 5476 0), published in 2005 by the NSW Government.

This Clause 4.6 Exception to Development Standards should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by GSA Planning.

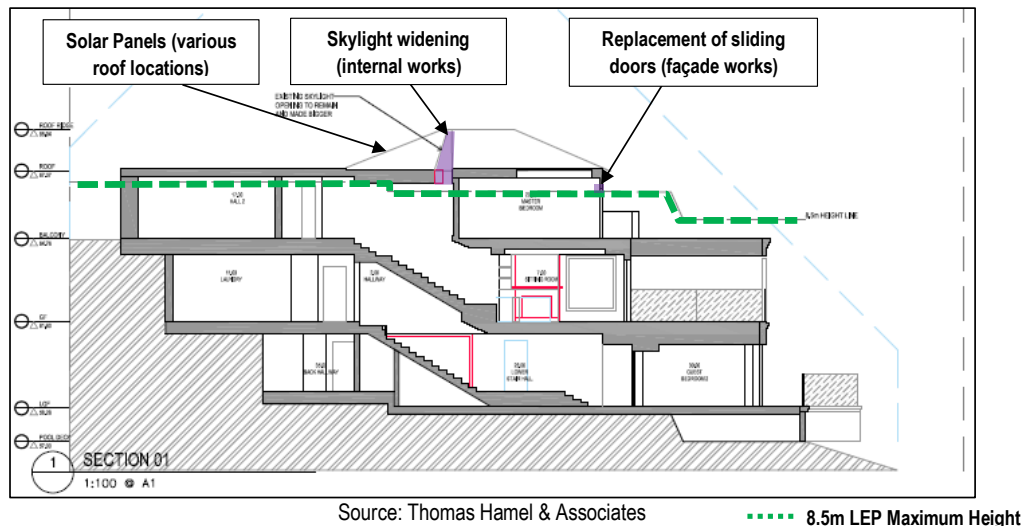
2. Overview

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.

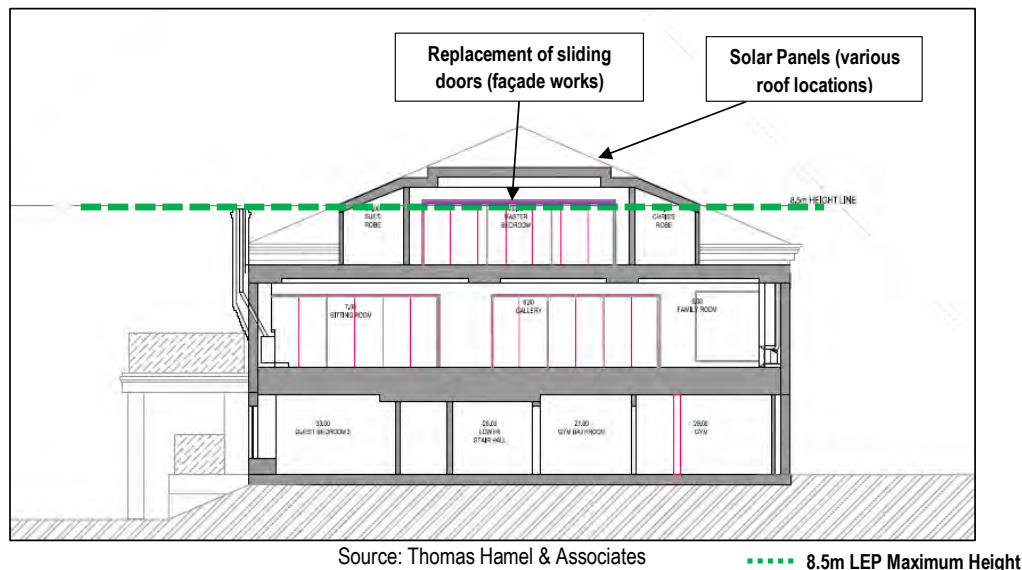
3. Specify the nature of Development Standard sought to be varied and details of variation:

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 of the Height of Buildings Map which indicates a maximum height of 8.5 metres applies to the subject site. Clause 4.3(2D) permits a height of up to 10 metres on sites with a maximum height standard of 8.5 metres, given requirements relating to Clause 4.3(D)(a) – (d) are achieved (refer previous page). As the site does not meet the requirements of Clause 4.3(D) (namely the minimum slope of the building footprint), the 8.5 metre LEP height standard applies.

The proposed alterations and additions make modest changes to the existing building on site, which remains as a two to three storey dwelling with a pitched roof. The dwelling is subject to an existing height non-compliance, being 10.93 metres in height (see **Figure 1 and 2** below and on the following page), which is 2.43 metres above the maximum height of 8.5m per the Height of Buildings map. As the existing Level 3 and the roof are partially above the height standard, some minor proposed works to this level restrained to replacement of the rear sliding door system; internal widening of the skylight; and addition of new solar panels, inevitably do not comply with the maximum permitted height.



**Figure 1: Existing and Proposed Height
(Section 01)**



**Figure 2: Existing and Proposed Height
Section 02**

Importantly, the proposed works above the 8.5m LEP height standard will not alter the existing maximum building height or envelope. Therefore, the proposed alterations and additions are considered minor in nature and will not result in any adverse impacts on the amenity of adjoining sites.

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> |

Flexibility is sought in the application of the building height development standard to the proposed development in the circumstance of this particular case. Achieving strict compliance would not be possible, as the existing dwelling house presents a departure from the building height development standard applicable to the subject site, as set out in the Pittwater LEP 2014.

The minor proposed works to the façade at Level 3; the increased skylight void within the roof form; and the new solar panels to the roof that are above the LEP height standard are modest and have been designed to enhance residents' amenity. There is no discernible impact on the current style or appearance of the dwelling, or the existing height, bulk and scale. Importantly, the alterations and additions are contained wholly within the existing building envelope and maximum height. Accordingly, the proposal will preserve existing views from the street and surrounding development, solar access, and privacy for surrounding development, regardless of the technical height non-compliance.

The contemporary upgrades will maintain the existing appearance of the façade when viewed from the public and private domain. The new solar panels are situated away from the front roof plane and will generally be screened by existing landscaping from neighbouring dwellings. Therefore, the works are unlikely to be readily discernible when viewed from neighbours, the street, or the foreshore.

Accordingly, flexibility in this circumstance will achieve a better planning outcome for and from the development. Importantly, the proposal will not alter the existing building height.

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 building height development standard, the proposal achieves the desired low-density 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 building height standard are explained below.

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

'Desired future character' is not defined in the LEP. In *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115 [63] ('SJD'), Preston CJ states, inter alia:

...the desired future character of the neighbourhood or area can be shaped not only by the provisions of WLEP, including the development standards themselves, but also other factors, including approved development that contravenes the development standard.

Accordingly, the desired future character is shaped by the text and context of the LEP and recent approvals in the vicinity. Each of these will now be discussed. The relevant clauses in the LEP which relate to urban character and built form are:

- a. The zoning of the land (Clause 2.2 and the Land Zoning Map);
- b. The zone objectives and land use table (Clause 2.3); and
- d. The development standards in Part 4:
 - i. Clause 4.3 Height of Buildings and Height of Buildings Map which prescribes a maximum height of 8.5m.

The C4 Environmental Living Zone envisages a range of uses. These uses which are permissible with development consent are:

Bed and breakfast accommodation; Boat sheds; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Dwelling houses; Environmental protection works; Group homes; Health consulting rooms; Home-based child care; Home industries; Jetties; Oyster aquaculture; Places of public worship; Pond-based aquaculture; Respite day care centres; Roads; Secondary dwellings; Tank-based aquaculture; Water recreation structures.

The proposed alterations and additions to the existing dwelling will remain consistent with the permissible uses of the C4 Zone. The proposed works will enhance occupants' amenity and have no impact on the overall character and appearance of the dwelling when viewed from neighbouring sites and the public domain. The proposal will be consistent with the zone objectives, as detailed in Section 6 of this report.

While the proposal results in a technical departure from the building height provisions of the Pittwater LEP 2014, this development standard is considered to be less applicable in the circumstances of this case, as the existing building was constructed prior to the implementation of the subject standard. The building will remain as a predominantly two to three storey dwelling with a pitched roof, with the design of the proposed alterations and additions maintaining the existing building height, architectural style and scale when viewed from surrounding dwellings and the public domain. Therefore, the proposal is consistent with the desired future character of the Palm Beach locality.

The height variation will facilitate upgrades to the amenity of the dwelling, while remaining consistent with the surrounding context of development in the Palm Beach locality. According to the Northern Beaches Council Clause 4.6 Variations Register and the DA Tracker, there are a number of recent approvals for alterations and additions to an existing dwelling in the Palm Beach Locality which have resulted in departures from the building height development standard. While it is acknowledged that each development is assessed on its own merits, it is still relevant to consider developments which have been approved by Council for similar reasons as this application. Such examples include, inter alia:

- No. 62 Florida Road, Palm Beach (DA 2022/0042), approved 2 November 2022, for alterations and additions to a dwelling house including a swimming pool and cabana with a studio. The justification was that despite the height variation, the proposed bulk and scale is appropriate for the site and locality, with no significant impacts on existing views and outlooks.
- No. 1120 Barrenjoey Road, Palm Beach (DA 2022/0925), approved 28 September 2022, for alterations to additions to a dual occupancy to create a dwelling house. The justification was that despite the height variation, the proposal continues to provide low-impact residential development of an appropriate bulk and scale, maintains the landscaped character and has no detrimental amenity impacts.
- No. 20 Palm Beach Road, Palm Beach (DA 2020/0214), approved for alterations and additions to a dwelling house. The justification was the height variation is a result of an existing non-compliance, and the proposal provides an appropriate bulk and scale, with no amenity or streetscape impacts.

These approvals also inform the desired future character of the Palm Beach Locality, and demonstrate appropriate circumstances to permit a height non-compliance. In particular, DA 2020/0214 at No. 20 Palm Beach Road reflects a similar scenario to that proposed in the subject DA, where the height variation was the result of an existing non-compliance and did not result in any amenity or streetscape impacts.

The new works which are situated above the building height limit relate to minor internal, façade and roof works only, and are compatible with the height, bulk and scale of the existing built form and surrounding context. The variation is similar to recent approvals nearby the subject site. Therefore, the height and scale is consistent with the desired future character of the area in accordance with *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115 [63].

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

The surrounding area and nearby development is predominantly characterised by two and three storey dwelling houses, with a mix of pitched and flat roof forms. As indicated, the proposal is of a compatible height, bulk and scale to surrounding development in the Palm Beach locality. The well-designed alterations and additions will retain the two to three storey built form and appearance of the site from the public and private domain.

The proposed alterations and additions above the LEP height are positioned within the existing roof form, and like-for-like at the rear façade of the dwelling. The works are designed to enhance natural light and ventilation internally to the dwelling. Importantly, as these works will be contained within the existing building envelope and maximum height, the proposal will retain compatibility with the height and scale of surrounding and nearby development.

(c) To minimise overshadowing of neighbouring properties.

As the proposed works above the building height standard are contained within the existing building envelope and height, it will maintain existing levels of solar access to adjacent properties. Accordingly, shadow diagrams have not been prepared, as no additional overshadowing is anticipated as a result of the technical height departure.

(d) To allow for reasonable sharing of views.

The subject site and adjoining development enjoy panoramic land and water views to the north, east and west. The proposed works above the building height standard are contained within the existing building envelope and below the maximum existing height, with existing dense landscaping to be retained on the subject site. Accordingly, any potential views and outlooks across the subject site from neighbouring dwellings will be retained as existing, with equitable sharing of views maintained.

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

The existing dwelling has a stepped design which responds to the challenging site topography. The technical building height departure at Level 3 and part of the roof will retain the shape, form and height of the existing building, with no excavation proposed as part of the alterations and additions, only removal of some topsoil. Accordingly, the proposed works and area above the height standard will not affect the existing building height non-compliance, and maintains the existing dwelling's response to the underlying topography.

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

The proposed works above the height limit do not generate any further site disturbance, or loss of landscaped area. The subject site is within the vicinity of heritage items along Sunrise and Barrenjoey Roads. Given the near-identical appearance of works above the height standard, and compatible bulk and scale of the alterations and additions, the proposal will not adversely impact the heritage significance of nearby heritage items.

Accordingly, although the proposal will result in a technical exceedance of the building height development standard, this is due to an existing non-compliance. The proposal is unlikely to have any adverse impacts as the design is similar to the existing situation, consistent with the surrounding context, and will maintain the amenity of neighbouring properties and the public domain.

5.2 There are Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard

The proposal is permissible in the C4 Environmental Living 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 building height non-compliance as it is a result of an existing building height non-compliance, and will facilitate improvements to the functionality and amenity of the existing dwelling. This is further discussed below.

Existing Variation

The building height non-compliance is a function of the existing development on-site, with the dwelling being constructed prior to the implementation of the current applicable height standard. The proposed works above the building height standard will be contained within the existing building envelope. The proposed variation to the height standard will enable upgrading works to be undertaken to the existing dwelling, which will improve natural light and ventilation to the upper level, and the longevity of the built form. Further, as the proposed works above the height standard remain within the overall external envelope and below the existing maximum height, no additional height to the existing built form is proposed.

Proposed works to the upper-portion of Level 3 of the dwelling result in a minor technical exceedance of the height standard due to the existing non-compliance. The modest alterations and additions result in no increase to the maximum building height, and will not alter the visible height, bulk and scale when viewed from the public or private domain. Therefore, in our opinion, the existing variation to the height of buildings development standard results in a technical departure for the proposed works.

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 building height development standard, as already demonstrated; and the C4 Environmental Living Zone, as discussed below:

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

Response: The proposal retains the low-impact residential character through providing modest alterations and additions to the existing dwelling. Given the minor nature of works and technical height non-compliance, the proposed works above the building height standard will not detrimentally impact on the surrounding ecological, scientific and aesthetic values of the area.

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

Response: The proposed works above the height standard will not have adverse ecological impacts, by maintaining the existing building envelope, landscape area, and maximum height.

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

Response: The proposal will retain the existing single dwelling on-site, with modest alterations and additions. The proposed works above the height standard will retain the existing building envelope and height, along with the building's stepped design in response to the sloping topography. The proposal will also preserve existing landscaped areas across the subject site.

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

Response: Due to the location of the subject site, the additional height will not have a direct influence on riparian and foreshore vegetation. In any case, the proposal generally has considered nearby wildlife corridors through preserving the heavily vegetated character of the site, particularly to the rear.

Accordingly, in our opinion, the proposal complies with the relevant objectives of the LEP, 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 standard in respect of applications made under Clause 4.6, subject to the conditions in the table in the notice. While the proposal exceeds the development standard by over 10%, the Planning Circular provides for the Local Planning Panel to assume concurrence.

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 building height variation will enhance the amenity and functionality of the existing dwelling without significantly, unreasonably or unacceptably impacting neighbouring properties. The proposal will not result in any additional effects in terms of solar access, privacy or views.

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. As indicated, the well-designed works meet the C4 Environmental Living Zone and building height development standard objectives, as well as maintaining neighbours and local amenity.

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 objectives of the C4 Environmental Living 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	8.5m	
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 Tests 1 <i>Wehbe</i> : 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: The building height variation is a function of the existing building height; and improves internal amenity for residents.	YES
26-27	2nd Positive Opinion – 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.	6	The proposed development achieves the objectives of the building height development standard as addressed under Test 1 of <i>Wehbe</i> . The proposal also achieves the objectives of the C4 Environmental Living Zone.	YES

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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ITEM 3.7**DA2023/0874 - 220 BARRENJOEY ROAD NEWPORT -
ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
INCLUDING A SWIMMING POOL****REPORTING MANAGER****Steve Findlay****TRIM FILE REF****2023/670357****ATTACHMENTS**

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

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to DA2023/0874 for alterations and additions to a dwelling house including a swimming pool on land at Lot 8 DP 31532, 220 Barrenjoey Road NEWPORT, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0874
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Responsible Officer:	Dean Pattalis
Land to be developed (Address):	Lot 8 DP 31532, 220 Barrenjoey Road NEWPORT NSW 2106
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Sandra Madeleine Cotter John James Cotter
Applicant:	Sandra Madeleine Cotter

Application Lodged:	06/07/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	13/07/2023 to 27/07/2023
Advertised:	Not Advertised
Submissions Received:	8
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 1,945,704.00
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EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) due to Council receiving a total of 8 submissions during the community notification period.

Concerns raised in the objections predominantly relate to the existing right of carriageway which traverse the boundaries of the subject site and adjoining sites to provide vehicle access to Barrenjoey

Road, as well as built form non-compliances.

Amended information has been provided by the applicant to address critical assessment issues raised by Council relating to height and scale, landscaped area, geotechnical reporting and a construction management plan.

In response to concerns raised by objectors and to address assessment issues, standard conditions have been imposed in relation to geotechnical, dilapidation and construction traffic management,

Special conditions have also been imposed in relation to landscaped area to ensure "no net loss" of landscaping on the site.

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

PROPOSED DEVELOPMENT IN DETAIL

The development application proposes alterations and additions to an existing dwelling house and construction of a swimming pool, including the following works:

- Internal reconfiguration of the existing lower ground floor and ground floor, as well as an altered roof design
- New first floor addition
- New swimming pool and attached deck

Amended plans

Further information has been provided by the applicant during the assessment process which included the following amendments:

- Removal of parapet structures which encroached the 8.5m height plane
- Reduction in ceiling height of proposed ground and first floors
- Increased northern side setback distance of ground and first floors
- Updated shadow diagrams including elevational shadows
- Updated Landscaped Area arrangement
- Updated Geotechnical Report to address excavation works in proximity to Barrenjoey Road escarpment
- Removal of works encroaching the existing right of carriageway and a construction management plan illustrating that no elements of the construction will encroach the carriageway
- Replacement of the proposed combustion fireplace with a gas fireplace

The amended information reduced the environmental impact of the proposed development and therefore does not require additional community notification in accordance with Council's 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 21 Development Control Plan - D10.7 Front building line (excluding Newport Commercial Centre)

Pittwater 21 Development Control Plan - D10.8 Side and rear building line (excluding Newport Commercial Centre)

Pittwater 21 Development Control Plan - D10.13 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 8 DP 31532 , 220 Barrenjoey Road NEWPORT NSW 2106
Detailed Site Description:	The site known as 220 Barrenjoey Road, Newport is described as Lot 8, DP 31532, and has an area of 696.5m². The site has a 21.62m frontage to Barrenjoey Road and a rear boundary of 14.935m. A shared right-of-carriageway occupies a 6.5m wide strip adjacent to the eastern boundary. The site is occupied by a two-storey rendered dwelling house with tile roof. Vehicular access to the site is from the shared right-of-carriageway, leading from Barrenjoey Road. Barrenjoey Road runs along the western boundary of the site at the base of an 8m - 10m vegetated rock escarpment. The site itself has a moderate slope of approximately 15 degrees, falling from east to west. The site is located within the C4 Environmental Living Zone. Adjoining and surrounding development is characterised by detached dwellings on steeply sloping sites. Properties are

generally orientated toward the views of Pittwater available to the west and the ocean 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.

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)	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. <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. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended architectural plans and geotechnical reporting. The amended information was formally received by Council on 29 September 2023. <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. <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. <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. <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.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.

Section 4.15 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 13/07/2023 to 27/07/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 8 submission/s from:

Name:	Address:
Pat Hanrahan	6 Karloo Parade NEWPORT NSW 2106
Mr Shaun Stephen Rutherford	224 Barrenjoey Road NEWPORT NSW 2106
Alexandre Zeus Dimitriadis Joanna Elizabeth Dimitriadis	216 Barrenjoey Road NEWPORT NSW 2106
Mrs Helen Elizabeth Woosnam	214 Barrenjoey Road NEWPORT NSW 2106
Mr Ross Morton Scoble	218 Barrenjoey Road NEWPORT NSW 2106
Mrs Margaret Ann Dimitriadis	4 Karloo Parade NEWPORT NSW 2106
Blackwattle Planning	64 Nareen Parade NORTH NARRABEEN NSW 2101
Mr Alan John Mason	8 Karloo Parade NEWPORT NSW 2106

Eight (8) submissions were received during the community notification period and the following concerns were raised:

- **Construction Management Plan and carriageway access/parking**

Comment:

The subject site as well as its surrounding properties are currently serviced by an existing shared private carriageway which traverses the front boundaries of the respective allotments and provides vehicular access to Barrenjoey Road. Concern was raised by the adjoining users of the carriageway

regarding the access and impact of construction vehicles to the private road. It is noted the applicant has provided a construction management plan during the assessment process (Dwg A.01.03 dated 26 September 2023) which illustrates that all materials and vehicles associated with the construction process shall be wholly contained within the subject site and shall not encroach the carriageway in any manner. Furthermore, suitable conditions of consent have been recommended for a construction traffic management plan to confirm that no disruption will occur to the other users of the carriageway as well as relevant pre and post construction dilapidation reporting of the carriageway to be conducted.

- **Bulk and Scale**

Comment:

Concern was raised regarding the proposed building height and envelope encroaching the prescribed standards/controls. The applicant has provided amended information during the assessment process which reduced the ceiling height and increased the northern side setback distance of the ground and first floors, as well as removed the parapet structures which encroached the prescribed 8.5m height plane. As a result, the proposed works are entirely numerically compliant with the building height standard and building envelope control. No change is proposed to the existing envelope of the ground floor.

- **Front and rear setback**

Comment:

Concern was raised regarding the dwelling not complying with the front setback requirements. A full merit discussion has been conducted within this report under Clause D10.7 which identifies that the setback of the dwelling to Barrenjoey Road is unchanged from the existing extent, whilst the setback to the carriageway frontage complies with the 6.5m requirement.

- **Landscaped Area**

Comment:

Concern was raised regarding numerical non-compliance with the landscaped area control. Amended plans have been provided by the applicant during the assessment process which altered the proposed landscape outcome, and a special condition has been imposed, to ensure that there is no reduction from the existing extent of on-site landscaped area.

- **Geotechnical Hazards**

Comment:

Concern was raised regarding the geotechnical impact of the proposed swimming pool excavation works which are located in close proximity to the existing escarpment adjoining Barrenjoey Road. An updated Geotechnical Report has been provided by the applicant which provides additional information and recommendations protecting the stability and geotechnical character of the escarpment. Suitable conditions of consent have also been recommended to ensure consistency with the recommendations of the report as well as Council's Geotechnical Risk Management Policy for Pittwater.

- **Visual Privacy**

Comment:

Concern was raised by the occupants of the northern adjoining property (No.222) regarding visual privacy impacts of the areas along the northern side elevation of the proposed development. It is noted all rooms proposed along the northern elevation of the proposal consist of bedrooms or low-trafficable areas that are not conducive to high volumes of pedestrian movement or subsequent overlooking opportunities, with the exception of an open terrace area adjoining the ground floor living room. However, due to the skewed northern side boundary of the subject allotment, the terrace is considered to possess a suitable spatial separation to the principal living areas of the northern adjoining site to limit visual privacy impacts. In addition, the rear yard of the northern adjoining neighbour which adjoins the proposed terrace, is characterised by a steeply sloping topography that is not considered to be conducive for use as a principal private open space area that requires visual protection from overlooking. It is also noted that the applicant has provided amended plans during the assessment process which increased the northern side setback distance of the ground and first floors as well as provide new screen planting along the northern boundary adjacent to the front patio of No.222.

- **Dilapidation Report**

Comment:

Concern was raised by the occupants of No.222 regarding the impacts of the proposed excavation works in proximity to the common boundary. It is noted a Geotechnical Report prepared by a suitably qualified consultant has been provided with the application however a suitable condition of consent is also recommended with this consent for a pre and post construction dilapidation report to be conducted at No.222 Barrenjoey Road.

- **View Sharing**

Comment:

Concern was raised in regards to view sharing by the owners of No.216, No.222 and No.224 Barrenjoey Road. However, following a phone conversation with the owner of No.224 Barrenjoey Road, the assessing officer was advised that the objector's property does not benefit from any ocean or iconic views. Similarly, the owner's of No.222 also advised that the only area of their property they experience ocean views is from the front hardstand parking area and not from any internal areas of their dwelling. As a result, a view loss inspection was conducted at No.216 Barrenjoey Road only. Upon inspection, it was observed that the owners of No.216 currently benefit from a view corridor which looks over the top of the existing development on the subject site towards the Pittwater waterway to the north-west. It is noted these views are obtained from a ground floor living room in a standing position. However, these views are considered difficult to protect in accordance with the view sharing principles of Tenacity Consulting vs Warringah Council [2004] as the views are obtained generally over a side boundary and are located within the envelope of a compliant development on the subject site. Furthermore, No.216 benefits from existing whole ocean views over their eastern rear boundary toward Bungan Beach which are also experienced from their ground floor living room as well as from their adjoining deck and kitchen. These views are considered the principal views available from No.216 which contain greater visual character and are entirely unaffected by the proposed development. As a result, a full written assessment against the view sharing principles of Tenacity Consulting vs Warringah Council [2004] is not considered necessary in this circumstance.

Figure 1: View corridor over the top of the existing development at the subject site experienced over the northern side boundary of No.216 toward Pittwater Waterway



Figure 2: Ocean view toward Bungan Beach to the east experienced from ground floor kitchen of No.216 (unaffected by proposal)



Figure 3: Ocean view toward Bungan Beach to the east experienced from ground floor living room deck of No.216 (unaffected by proposal)



Figure 4: Ocean view toward Bungan Beach to the east experienced from ground floor living room deck of No.216 (unaffected by proposal)



REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	Council's Biodiversity Referrals team have assessed the Development Application for compliance with the following applicable controls: • Pittwater LEP cl. 7.6 Biodiversity • Pittwater 21 DCP cl. B4.6 Wildlife Corridors The Development Application seeks consent for alterations and additions to a dwelling house including a swimming pool. The proposed development is situated in areas that are either previously build upon or do not contain native vegetation. As such, the development is designed, sited and will be managed to avoid any significant adverse environmental impact. No objections, subject to conditions.

Internal Referral Body	Comments
NECC (Development Engineering)	The proposed development is in Region 1. On-site detention is not required as the proposed additional impervious areas total less than 50m ² . Internal driveway construction is proposed. A geotechnical report has been provided. I have no objections to the proposed development.

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

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.A500342_02 dated 15 September 2023).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

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	7.5m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	10m	Lower Ground - Existing Ground Floor - Existing Swimming Pool - 1m	- - 90%	No but existing No but existing No
Rear building line	6.5m	Lower Ground - Existing Ground Floor - 9.4m First Floor - 6.5m	- - -	Yes Yes Yes
Side building line	2.5m (south)	Lower Ground - Existing Ground Floor - Existing First Floor - 2.5m Swimming Pool - 0.45m (decking)	- - - 82%	No but existing No but existing No but existing No
	1m (north)	Lower Ground - Existing Ground Floor - Existing First Floor - 2.7m - 1m Swimming Pool - 5.8m	- - - -	Yes Yes Yes Yes
Building envelope	3.5m (south)	Ground Floor - Existing First Floor - Within envelope	- -	No but existing Yes
	3.5m (north)	Ground Floor - Existing First Floor - Within envelope	- -	No but existing Yes
Landscaped area	60% (417.9m2)	268.2m2 (38.51% incl. 6% allowance)	35.82%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.10 Newport Locality	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B4.6 Wildlife Corridors	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.6 On-Street Parking Facilities	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	Yes	Yes
D10.1 Character as viewed from a public place	Yes	Yes
D10.3 Scenic protection - General	Yes	Yes
D10.4 Building colours and materials	Yes	Yes
D10.7 Front building line (excluding Newport Commercial Centre)	No	Yes
D10.8 Side and rear building line (excluding Newport Commercial Centre)	No	Yes
D10.11 Building envelope (excluding Newport Commercial Centre)	Yes	Yes
D10.13 Landscaped Area - Environmentally Sensitive Land	No	Yes

Detailed Assessment

D10.7 Front building line (excluding Newport Commercial Centre)

Description of Non-Compliance

The control permits a front building line of 10m for land zoned C4 Environmental Living adjoining Barrenjoey Road. It is recognised however that the boundary of the site which adjoins Barrenjoey Road is located at the top of an escarpment, meaning direct access to the subject site is obtained from the shared carriageway at the opposite boundary to the east. However, the western boundary is considered the front boundary for the purposes of this assessment due to it being the boundary which adjoins Barrenjoey Road as mentioned in the control.

The front setback to the lower ground and ground floors, whilst non-compliant, remain unchanged from the existing development. The first floor is orientated away from the front boundary towards the east and comfortably complies with the control.

A new swimming pool is proposed inside the front setback area with a minimum setback distance of 1.0m which does not comply with the control. It is noted the swimming pool is a below ground structure located above the escarpment and shall not be visible from the public domain. The site is also constrained by existing on-site development which restricts the location of the proposed pool.

Furthermore, no reduction is proposed to the overall existing on-site landscaped area percentage which retains suitable areas for soft landscaping and vegetation planting.

Merit Consideration

- *Achieve the desired future character of the Locality.*
Comment:

The encroachments are consistent with other nearby developments and are therefore compatible with the desired future character, as the existing character is maintained and enhanced.

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

The encroachment within the front boundary setback area will not have any detrimental impact on the provision of views enjoyed from any surrounding public or private properties.

- *The amenity of residential development adjoining a main road is maintained.*
Comment:

The development shall not adversely impact the amenity of the adjoining main road.

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

The proposal does not necessitate the unreasonable removal of any significant vegetation whilst appropriate areas for additional landscaping within the subject site are maintained.

- *Vehicle manoeuvring in a forward direction is facilitated.*
Comment:

Reasonable ability for vehicle maneuvering is maintained.

- *To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.*
Comment:

The proposed encroachments are in keeping with the height of the natural environment and do not alter the character of the streetscape.

- *To encourage attractive street frontages and improve pedestrian amenity.*
Comment:

As described above, the works are sympathetic to the character of the locality. Existing vegetation and fencing shall visually screen the proposal from the streetscape whilst the proposal will not reduce pedestrian amenity in the public domain.

- *To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment*
Comment:

The proposal is sympathetic to the character of the locality and consistent to surrounding properties and thus adequately respond to the spatial characteristics of the urban environment.

On balance the non-compliance sought to the front building line control succeeds when assessed against the control outcomes, and thus the variation may be **supported** in this circumstance.

D10.8 Side and rear building line (excluding Newport Commercial Centre)

Description of Non-compliance

The control permits development to be setback 2.5m from one side boundary and 1.0m from the other.

The proposed swimming pool decking is located 0.45m from the southern side boundary, which does not comply with the 2.5m requirement.

The control states that a 1.0m minimum setback is permitted for swimming pools and spas providing the relevant requirements and outcomes are met. Therefore, to ensure a satisfactory landscaped outcome for the side boundaries is maintained, a suitable condition of consent is recommended to increase the setback of the proposed deck attached to the swimming pool to 1.0m and ensure there is a minimum 1.0m-wide landscaped strip between the pool deck and the southern side boundary.

The proposed decking is located at existing ground level and located adjacent to two battle-axe handles which provide a spatial and visual buffer to the private open space of No.214 Barrenjoey Road to the south. Therefore, subject to conditions, the proposed development is considered reasonable in this context.

The proposed ground and first floors, whilst non-compliant with the southern side setback control, are unchanged from the existing extent. All remaining components of the development are numerically compliant with the control.

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

Merit Consideration

To achieve the desired future character of the Locality.

Comment

The proposed development is considered to be consistent with the desired future character statement of the Newport locality.

The bulk and scale of the built form is minimised.

Comment

Existing boundary fencing and vegetation shall provide adequate visual screening, whilst the proposal is not considered to unreasonably increase the bulk and scale of the built form of the existing dwelling.

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

Comment

Views to and from public and private places will not be impacted by the proposal.

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

Comment

As noted above, the proposal will allow for reasonable view sharing.

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

Comment

The proposal is not considered to create visual privacy impacts. The proposal complies with the solar access requirements of C1.4 P21 DCP.

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

Comment

There is sufficient vegetation and landscaped area on site to provide for an attractive street frontage.

Flexibility in the siting of buildings and access.

Comment

Flexibility is provided in this circumstance as the development will not result in unacceptable streetscape or amenity impacts, nor will the development have an adverse impact on the natural environment.

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

Comment

Adequate vegetation will be retained ensuring compliance with merit consideration.

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

Comment

N/A the site does not adjoin a commercial zone.

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

D10.13 Landscaped Area - Environmentally Sensitive Land

Description of Non-compliance

As per the proposed Landscape Area Calculation Plans (Dwg A.05.01), the proposed development results in no net reduction in Landscaped Area in comparison to the existing extent, which is an acceptable outcome.

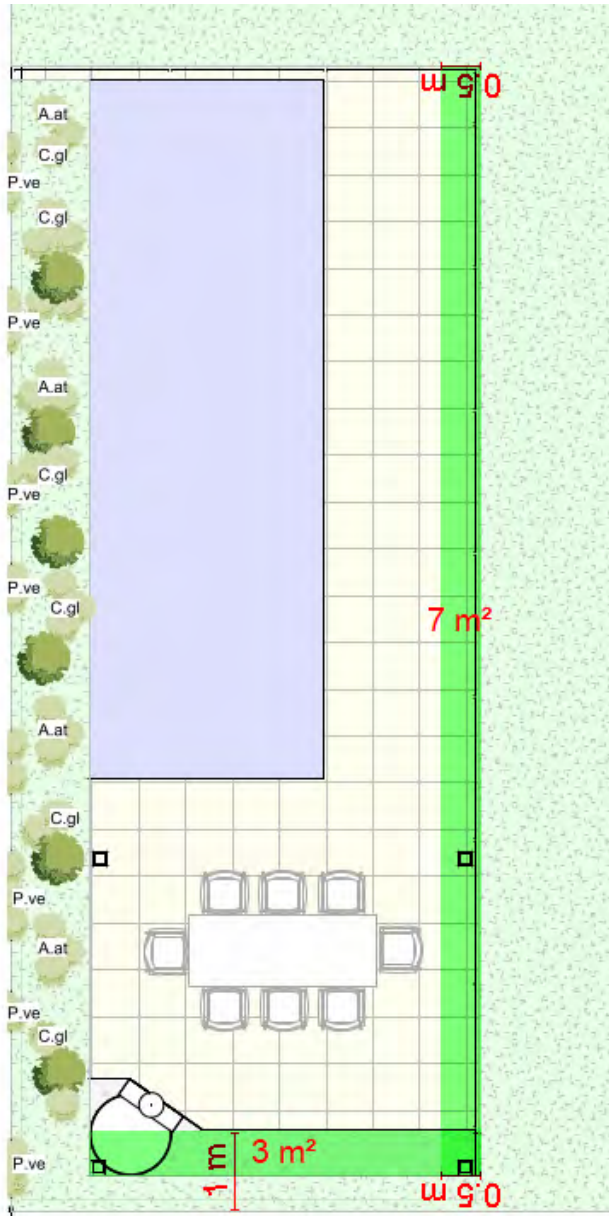
However, this proposed landscaped area percentage includes the area located adjacent to the western (front) elevation of the lower ground floor but is located underneath the western elevation of

the ground floor above which overhangs this area. Therefore, due to the location of built form above, only the outer half of this portion of landscaped area is considered to be functional landscaped area in the context of this assessment. Given this portion accounts for approximately 20m² in the proposed calculation, only 10m² would therefore be considered functional, resulting in an overall Landscaped Area shortfall of 10m² for the proposed site in comparison to the existing extent.

To offset this loss of landscaped area, suitable conditions of consent are recommended for the full length of the eastern edge of the proposed pool decking to be trimmed by 0.5m and replaced with soft landscaping.

This in addition to the condition recommended under Clause D10.8 to increase the southern side setback of the pool deck, shall suitably increase the landscaped area to an extent that there will be no net less from the existing arrangement.

Figure 5: *Resultant additional soft landscaping areas recommended via conditions of consent*



Merit Consideration

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

- ***Achieve the desired future character of the Locality.***

Comment

The proposed development is considered to be consistent with the desired future character

statement of the Newport locality.

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

Comment:

The alterations proposed as part of this application are largely located within the existing footprint and effectively minimise the bulk and scale of the built form. The deficient landscaped area is not considered to cause any unacceptable and bulk and scale impacts.

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

Comment:

A reasonable and compliant level of privacy and solar access is maintained to the residents of the subject site and adjoining properties. The proposal complies with the solar access requirements of C1.4 P21 DCP.

- ***Vegetation is retained and enhanced to visually reduce the built form. Conservation of natural vegetation and biodiversity.***

Comment:

The natural vegetation and biodiversity of the site is generally retained and conserved. Council's Landscaping and Biodiversity Officers have reviewed the application and raised no objections to approval, subject to conditions. Importantly, the proposal does not result in the loss of any significant trees or vegetation.

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

Comment:

It is considered that adequate soft landscaped area is maintained to reduce stormwater runoff, prevent soil erosion and siltation of natural drainage channels.

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

Comment:

The bushland character of the area will be maintained as no significant vegetation is required to be removed as a result of the proposed development.

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

Comment:

The proposed modifications remove a nominal area of soft surface, and retain ample space for infiltration of water to the water table.

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

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 \$19,457 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,945,704.

CONCLUSION

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

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

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

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

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

PLANNING CONCLUSION

This proposal, for alterations and additions to an existing dwelling house and construction of a swimming pool, has been referred to the Development Determination Panel (DDP) due to greater than five (5) community objections being received.

The concerns raised in the objections have been addressed and resolved by amendments to the

architectural master set of plans, as well as conditions of consent relating to a Construction Traffic Management Plan (CTMP), geotechnical engineering matters and dilapidation.

Amended information provided by the applicant addressed the the critical assessment issues relating to height and scale, landscaped area, geotechnical reporting and a construction management plan, and a special condition has been imposed to ensure no net loss of landscaped area.

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2023/0874 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 8 DP 31532, 220 Barrenjoey Road, NEWPORT, 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.01.01	A	Site Plan	Studio Lykke	26 September 2023
A.02.01	E	Basement Plan	Studio Lykke	26 September 2023
A.02.03	D	Ground Floor Plan	Studio Lykke	26 September 2023
A.02.05	E	Level 1 Plan	Studio Lykke	26 September 2023
A.02.08	A	Pool Plan	Studio Lykke	26 September 2023

A.02.09	A	Driveway Plan	Studio Lykke	26 September 2023
A.03.01	B	Elevation E & W	Studio Lykke	26 September 2023
A.03.02	B	Elevation N	Studio Lykke	26 September 2023
A.03.03	B	Elevation S	Studio Lykke	26 September 2023
A.04.01	A	Section A & B	Studio Lykke	26 September 2023
A.04.02	A	Section C	Studio Lykke	26 September 2023
A.04.03	A	Section D	Studio Lykke	26 September 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Geotechnical Assessment (AG 23263)	2	AscentGeo	15 September 2023
BASIX Certificate (A500342_02)	-	Liam Hogan	15 September 2023
Waste Management Plan	-	Studio Lykke	Undated
Stormwater Management (SW00 - SW01)	A	Hyten Engineering	26 June 2023

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

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

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

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	21 July 2023

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

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

3. **Approved Land Use - Single Dwelling Only**

Nothing in this consent shall authorise the use of site as detailed on the approved plans for any land use of the site beyond the definition of a dwelling-house, in accordance with the Dictionary of the Pittwater Local Environmental Plan 2014.

The Basement Level of the dwelling, comprising the studio, rumpus and bed 4 is not be fitted with any cooking facilities to enable use as a separate occupancy.

Any variation to the approved land use beyond the scope of the above definition will require the submission to Council of a new development application.

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

4. **Prescribed Conditions**

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

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the

work relates (not being the Council) has given the Council written notice of the updated information.

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

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

Reason: Legislative requirement.

5. General Requirements

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

Demolition and excavation works are restricted to:

 - 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).
- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

- (f) Prior to the release of the Construction Certificate, payment of the following is required:
- i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
 - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
- i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished
- The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$19,457.04 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 \$1,945,704.00.

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

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

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

Reason: To provide for contributions in accordance with the Contribution Plan to fund the

provision of new or augmented local infrastructure and services.

7. Security Bond

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

8. No Clearing of Vegetation

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

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

Reason: To protect native vegetation.

9. Stormwater Disposal

The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's Water Management for Development Policy. Stormwater shall be conveyed from the site to Barrenjoey Road. Details by an appropriately qualified and practicing Civil or Hydraulic Engineer demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with Council's policy are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

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

10. Amendments to the approved plans

The following amendments are to be made to the approved plans:

- The entire length of the eastern side of the proposed pool deck area shall be reduced by 0.5m towards the west and replaced with soft landscaping.

- The southern side setback of the proposed pool deck and bbq area shall be increased to 1m and replaced with soft landscaping.

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.

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report 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.

12. 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.

13. Compliance with Standards

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

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

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

14. External Finishes to Roof

The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

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

15. Sydney Water "Tap In"

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

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

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

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

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

16. 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 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.
 - 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 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.
 - 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 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 the 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 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.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

17. Pre-Construction Dilapidation Report

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

Property / Properties: 222 Barrenjoey Road, Newport

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**18. 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.

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. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

26. Native Landscaping

Any new landscaping is to incorporate a minimum 60% locally native vegetation species as a proportion of the total number of plants. Locally native species are to be consistent with the relevant section of the Native Planting Guide available on Council's website.

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

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

27. 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.

28. **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.

29. **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.

30. **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.

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. **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

33. **Geotechnical Recommendations**

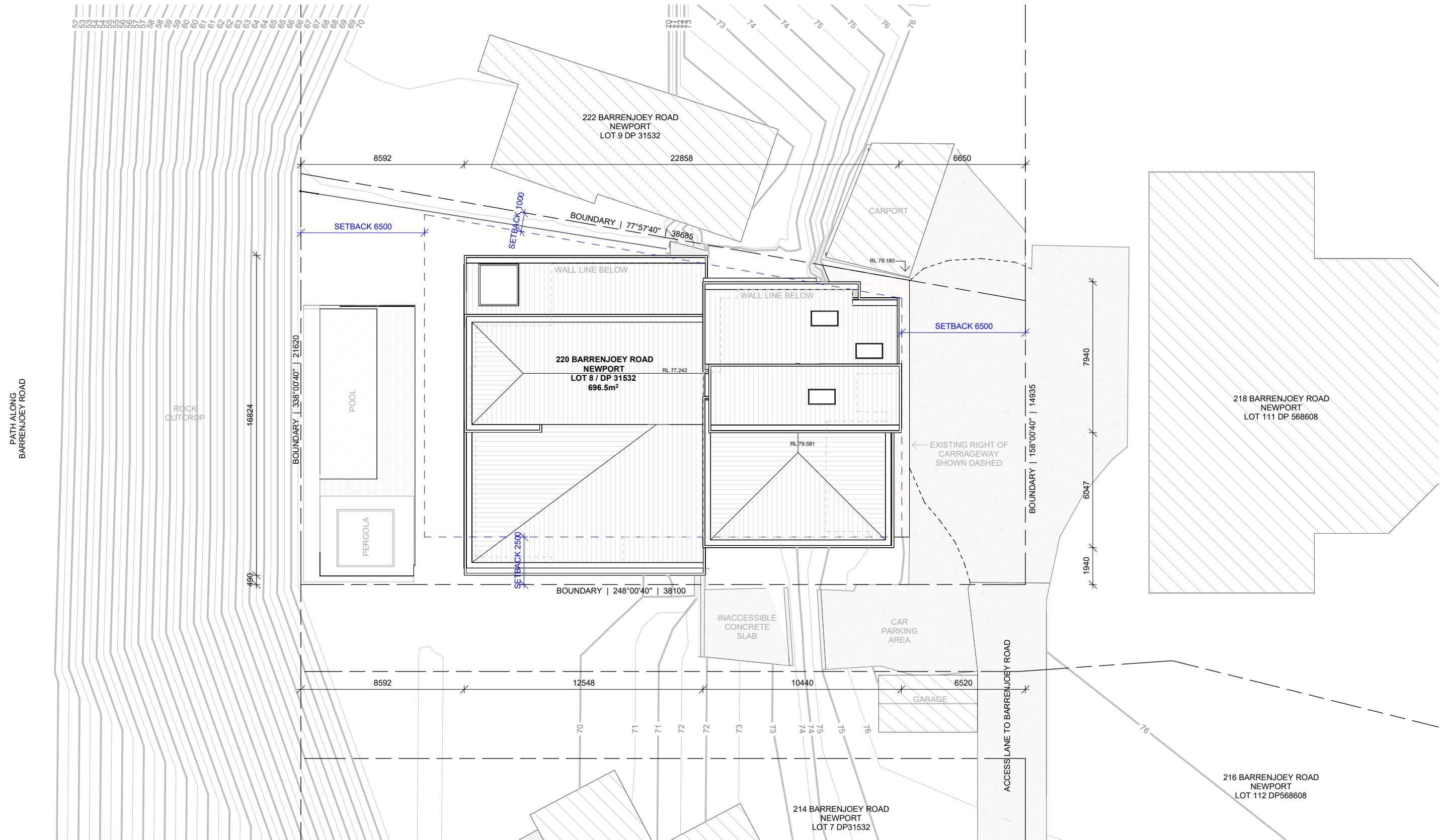
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

34. **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.

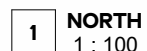
Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.



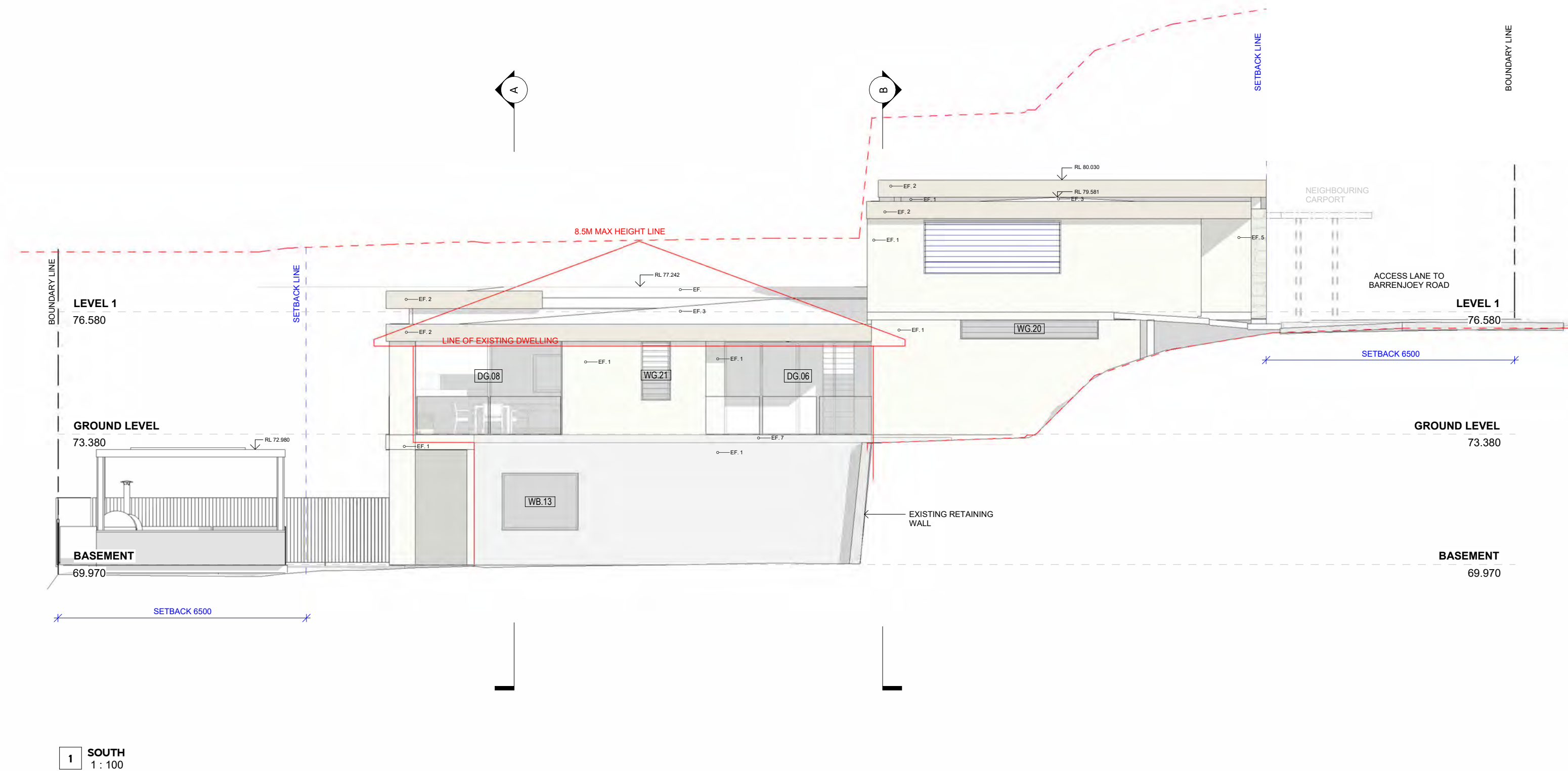
	STUDIO LYKKE hello@studio.lykke.au www.studio.lykke.au insta.studio.lykke.au	SITE PLAN LEGEND NEIGHBOUR DRIVEWAY/ROAD RETAINING WALL EXISTING TREE PROPOSED TREE TOPOGRAPHY OBJECT ABOVE OBJECT BELOW PROPERTY LINE DCP SETBACK		PROJECT NORTH 	PROJECT ADDRESS 220 BARRENJOEY ROAD, NEWPORT	DRAWING NAME SITE PLAN	DRAWING NUMBER A.01.01	REVISION A
				TRUE NORTH 	CLIENT COTTER	PROJECT STAGE DA SUBMISSION	DATE 26/09/2023	SCALE 1 : 200



	STUDIO LYKKE	hello@studiolykke.au www.studiolykke.au insta.studiolykke.au	ELEVATION LEGEND		EXTERNAL FINISHES				PROJECT NORTH	PROJECT ADDRESS	DRAWING NAME	DRAWING NUMBER	REVISION					
			NEW		DCP ENVELOPE		EF. 1	RENDERED WALL M-L		EF. 6				TIMBER BATTENS	220 BARRENJOEY ROAD, NEWPORT	ELEVATION E & W	A.03.01	B
			EXISTING		LEP MAX HEIGHT LINE		EF. 2	FC SHEET M-L		EF. 7				RENDERED CONCRETE M-L				
			EARTH		EXISTING HOUSE OUTLINE		EF. 3	ENSEAM ROOF SHEET M-L										
			BOUNDARY		LEVEL DATUM		EF. 4	CLEAR GLASS										
							EF. 5	SPLIT FIELDSTONE	'M-L'	MEDIUM TO LIGHT								
											CLIENT	PROJECT STAGE	DATE	SCALE				
												COTTER	DA SUBMISSION	26/09/2023	1 : 100			



DK STUDIO LYKKE hello@studiolykke.au www.studiolykke.au insta.studiolykke.au	ELEVATION LEGEND NEW EXISTING EARTH BOUNDARY DCP ENVELOPE LEP MAX HEIGHT LINE EXISTING HOUSE OUTLINE LEVEL DATUM	EXTERNAL FINISHES EF. 1 EF. 2 EF. 3 EF. 4 EF. 5 RENDERED WALL M-L FC SHEET M-L ENSEAM ROOF SHEET M-L CLEAR GLASS SPLIT FIELDSTONE EF. 6 EF. 7 'M-L' TIMBER BATTENS RENDERED CONCRETE M-L MEDIUM TO LIGHT	PROJECT NORTH TRUE NORTH	PROJECT ADDRESS 220 BARRENJOEY ROAD, NEWPORT	DRAWING NAME ELEVATION N	DRAWING NUMBER A.03.02	REVISION B
				CLIENT COTTER	PROJECT STAGE DA SUBMISSION	DATE 26/09/2023	SCALE 1 : 100



	STUDIO LYKKE hello@studio.lykke.au www.studio.lykke.au insta.studio.lykke.au	ELEVATION LEGEND NEW EXISTING EARTH BOUNDARY DCP ENVELOPE LEP MAX HEIGHT LINE EXISTING HOUSE OUTLINE LEVEL DATUM		EXTERNAL FINISHES EF. 1 RENDERED WALL M-L EF. 2 FC SHEET M-L EF. 3 ENSEAM ROOF SHEET M-L EF. 4 CLEAR GLASS EF. 5 SPLIT FIELDSTONE EF. 6 TIMBER BATTENS EF. 7 RENDERED CONCRETE M-L 'M-L' MEDIUM TO LIGHT		PROJECT NORTH TRUE NORTH	PROJECT ADDRESS 220 BARRENJOEY ROAD, NEWPORT	DRAWING NAME ELEVATION S	DRAWING NUMBER A.03.03	REVISION B
							CLIENT COTTER	PROJECT STAGE DA SUBMISSION	DATE 26/09/2023	SCALE 1 : 100

ITEM 3.8

**MOD2023/0093 - 48 THE SERPENTINE BILGOLA BEACH -
MODIFICATION OF DEVELOPMENT CONSENT DA2020/0318
GRANTED FOR ALTERATIONS AND ADDITIONS TO A
DWELLING HOUSE INCLUDING SWIMMING POOL**

REPORTING MANAGER**Steve Findlay****TRIM FILE REF****2023/670385****ATTACHMENTS**

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

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to Mod2023/0093 for modification of Development Consent DA2020/0318 granted for alterations and additions to a dwelling house including swimming pool on land at Lot 102 DP 16393, 48 The Serpentine BILGOLA BEACH, subject to the conditions set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2023/0093
Responsible Officer:	Gareth David
Land to be developed (Address):	Lot 102 DP 16393, 48 The Serpentine BILGOLA BEACH NSW 2107
Proposed Development:	Modification of Development Consent DA2020/0318 granted for Alterations and additions to a dwelling house including swimming pool.
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Benjamin Feek
Applicant:	Benjamin Feek
Application Lodged:	06/03/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	10/03/2023 to 24/03/2023
Advertised:	Not Advertised
Submissions Received:	5
Clause 4.6 Variation:	4.3 Height of buildings: 4.6%
Recommendation:	Approval

EXECUTIVE SUMMARY

The application seeks to modify Development Consent No.DA2020/0318 which was granted for alterations and additions to a dwelling house including swimming pool.

The application is referred to the Development Determination Panel (DDP) due to five (5) objections being received.

A total of five (5) submissions were received in response to the notification. The submissions primarily relate to; view loss; bulk and size of the garage and pedestrian entry; incompatibility with the character of the area; and building height and bulk.

Notification and preliminary assessment raised a number of concerns. Amended plans and additional information were submitted by the applicant to address these concerns, which included the deletion of the proposed pedestrian entry within the front setback. The assessment of this application is based on the amended plans.

The proposal seeks to increase the height the approved development. The proposed non-compliance is largely contained to the southern portion of the building as the land falls away steeply, and will relate to a minor section of the roof form. This is not considered to result unreasonable impacts to the character of the area or the amenity of adjoining properties.

Impacts on adjoining properties will be reasonable within the context and setting, however, conditions have been imposed requiring additional privacy measures.

On balance, the proposal represents a relatively modest change to the built form the the existing dwelling and additions approved under DA2020/0318. The overall setbacks, built form, scale and appearance of the building is substantially the same as the approved development. Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that, on balance the proposal (as amended) is a suitable and appropriate development for the subject site, for the reasons outlined in this report.

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

PROPOSED DEVELOPMENT IN DETAIL

The s4.55(2) modification application seeks to modify Development Application No DA2020/0318 approved for alterations and additions to a dwelling house including swimming pool in the following way:

Level 1 (Garden Level)

- Internal reconfiguration
- Increase in the internal length of Bed 4
- Alteration to rumpus room window opening (W1.1)
- Pool location and shape to be modified
- Proposed new lawn levels with extent of the previous timber deck reduced and replaced with lawn and garden planting
- Adjustments to external terraces, steps, and garden beds

Level 2 (Bedroom Level)

- Internal reconfiguration
- Alteration to window openings
- Proposed addition of bay window in study with external timber louvre screen
- Reduction in size of approved balcony to south-eastern corner of dwelling
- Increase in the internal length of Bed 1
- Increased side setback to southwestern boundary
- Demolition and reconstruction of external stair to level 1
- Relocation of existing internal stair to level 1
- Modification of laundry and master en-suite layout

Level 3 (Entry Level)

- Alteration of games room (previous rumpus under garage) window (W3.2)
- Alterations to stair and W.C layout
- Alterations to glazing around stair
- Modification of living room windows (W3.5, W3.6, W3.7)
- Extension of rear balcony to the rear and increase in side setbacks to the balcony
- Increase in living room building line to the rear
- Increase in length of media unit "bay" and windows deleted
- Alterations to window size and location in family room

Level 4 (Garage Level)

- Alteration to proposed garage footprint to align with existing games room below
- Modification of garage roof form
- Existing external entry steps to be demolished and re-orientated

Roof

- Alterations to proposed roof form over dwelling.

Landscaping

- Amended landscaping works including retaining wall and stairs

AMENDED PLANS

During the assessment of the application, amended plans were submitted which deleted the proposed pedestrian entry; reduced the height of the garage and reduced the extent of fill/terracing within the rear garden. The application has been assessed based off these amended plans.

In accordance with Northern Beaches Community Participation Plan, amendments which have a reduction of impact or minimal environmental impact to do have to be formally re-notified. It is considered the proposed amendments would have an overall reduction of impact.

ASSESSMENT INTRODUCTION

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

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
Pittwater Local Environmental Plan 2014 - 7.5 Coastal risk planning
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
Pittwater 21 Development Control Plan - A4.3 Bilgola Locality
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 - D3.1 Character as viewed from a public place
Pittwater 21 Development Control Plan - D3.6 Front building line
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

SITE DESCRIPTION

Property Description:	Lot 102 DP 16393 , 48 The Serpentine BILGOLA BEACH NSW 2107
Detailed Site Description:	The subject site consists of one (1) allotment located on the southern side of The Serpentine. The site is regular in shape with a frontage of 14.435m along The Serpentine and a depth of 50.11m along the western boundary and a depth of 49.818 along the eastern boundary. The site has a surveyed area of 716.5m². The site is located within the C4 Environmental Living zone and accommodates a part three, part two storey brick and timber residence with a metal roof. The front of the site contains a detached single storey brick rumpus room and storage area with a two car open parking platform located on the roof. Vehicular access is provided from The Serpentine via a concrete driveway. The site slopes down from The Serpentine Road frontage RL38.5 (northern) boundary and to the rear RL22.0 (southern boundary) with a fall in level of approximately 16.5m from the street frontage to the headland reserve. The site contains a lawn area to the rear which transitions into low lying bushland vegetation consistent with that of the adjoining headland reserve. Detailed Description of Adjoining/Surrounding Development The site is adjoined by a council owned headland reserve to the south and overlooks Bilgola Beach. Surrounding development is characterised by two (2) and three (3) storey residential dwelling houses of varying architectural styles.

Map:



SITE HISTORY

N0073/01

Development Application for new concrete parking slab and crash barriers - Approved 29/03/2001

PLM2019/0038

A pre-lodgement meeting was held on 21 March 2019 for alterations and additions to a dwelling house and proposed swimming pool.

DA2020/0318 (subject of this modification)

Development Application for alterations and additions to a dwelling house including swimming pool - Approved by Northern Beaches Local Planning Panel 19/08/2020

PLM2021/0176

A pre-lodgement meeting was held on 27 July 2021 for alterations and additions to a dwelling house.

APPLICATION HISTORY

22 May 2023

Council wrote to the applicant, raising concerns in relation to the application.

11 August 2023

Amended plans were received to address Council's concerns. Amended plans were submitted which deleted the proposed pedestrian entry; reduced the height of the garage; reduced the extent of fill/terracing within the rear garden and altered the proposed colours and materials. The application has been assessed based off these amended plans.

In accordance with Northern Beaches Community Participation Plan amendments which have a reduction of impact or minimal environmental impact to do have to be formally re-notified. It is considered the proposed amendments would have an overall reduction of impact.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2020/0318, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2020/0318 for the following reasons: • The modifications will not change the use of the site • The modifications will not significantly alter the form of development that was originally approved, • From qualitative and quantitative perspectives, the proposal will not be significantly altered by the proposed modifications.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval	Development Application DA2020/0318 did not require concurrence from the relevant Minister, public authority or approval body.

Section 4.55 (2) - Other Modifications	Comments
body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(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)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <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. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended plans and documents <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. <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

Section 4.15 'Matters for Consideration'	Comments
	application. <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. <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.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in 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 10/03/2023 to 24/03/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Ms Karlie Samantha Bombardier	6 Lincoln Avenue COLLAROY NSW 2097
Mrs Felicity Jane Norris	31 The Serpentine BILGOLA BEACH NSW 2107
Mr Dudley Neil Hoskin Mrs Katherine Anne Sophie Hoskin	31 C The Serpentine BILGOLA BEACH NSW 2107
Mrs Chelsey Baker	24 Old Barrenjoey Road AVALON BEACH NSW 2107
Avalon Preservation Trust Incorporated as Avalon Preservation Association	24 Catalina Crescent AVALON BEACH NSW 2107

The following issues were raised in the submissions:

- View Loss**

Comment:

The proposed development is acceptable in relation to view loss for the reasons detailed in the section of this report relating to Section C1.3 *View Sharing* of the P21 DCP. The requirements of this clause and the view sharing principles of *Tenacity Consulting vs Warringah Council [2004] NSWLEC 140* have been addressed and the issues raised within the residents submissions in relation to view loss do not warrant further amendment or refusal of the application.

- Bulk and Size of the Garage and Pedestrian Entry**

The submissions raised concerns that height and bulk of the garage and attached pedestrian entry results in unreasonable bulk and

scale and streetscape impacts.

Comment:

Following this submission, amended plans were received which deleted the proposed pedestrian entry within the front setback area, lowered the garage roof and increased the extent of glazing on the facade of the garage.

The applicant has advised that this increase in height is required to meet necessary head clearances for garage door & parking to meet relevant Australian Standards. As detailed within this report under Clause D3.1 *Character as viewed from a public place*, it is considered that the garage design (as amended) is acceptable and comparable with that of other properties along the lower side of The Serpentine.

- **Solar Access**

Comment:

It is considered that proposed development is acceptable in relation to overshadowing for the reasons detailed in the section of this report relating to *Section C1.4 Solar Access* of the P21 DCP.

- **Precedent**

Comment:

Concern was raised that the approval of a garage within the front setback would result in a precedent for the street. It should also be noted that numerous other properties along the lower side of The Serpentine feature double garages within the front setback. To approve the proposed development would not be setting a precedent, as the proposal is consistent with the existing character of the locality. This issue does not warrant refusal of the application.

- **Overdevelopment, Bulk and Scale and not in the Character of the Area**

Comment:

This matter has been addressed throughout this report, particularly within the section of the report relating to Clause 4.3 Height of buildings of PLEP2014; A4.3 Bilgola Locality and D3.9 Building envelope. In summary, the proposed changes subject of this modification represent a relatively modest change in built form and the amended scheme is not considered to result in unreasonable additional bulk and scale.

- **Non-compliance with DCP Controls - Building Envelope, Front Building Line, Rear Building Line; Bilgola Beach Locality and Landscaped Area**

Comment:

For each of the numerical non-compliances, a merit assessment was carried out against the objectives of that control in this report. The assessment has found the proposed non-compliances to be reasonable in this instance (subject to conditions).

- **Not in Public Interest**

Comment:

No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

- **Building Height**

Comment:

Concern was raised with the proposed height of the modified development and that the proposal does not meet the stipulated height requirement. The proposed non-compliance is largely contained to the southern portion of the building as the land falls away, and will relate to a minor section of the roof form. This is not considered to result in unreasonable impacts to the character of the area or the amenity of adjoining neighbours. An assessment of the building height has been undertaken within the relevant section of this report (see Clause 4.3 Height of buildings of PLEP 2014).

- **Encroachment on Road Reserve and Limiting Pedestrian and Cycle Access**

Comment:

Concern was raised that the existing hardstand and driveway encroach the public road reserve and limit pedestrian and cycle access. The proposed works do not seek to alter the existing driveway crossing. Council's Development Engineers and Road Assets Officer have reviewed the proposal and raise no objection to the existing driveway. No works are proposed on the Council Road Reserve.

- **Impact on Coastal Walkway and Scenic Protection**

Comment:

During the assessment of the application amended plans were received which deleted the proposed pedestrian entry within the front setback area to minimise the width of the garage and retain view corridors to the west of the garage. Additionally, transparent building materials (perimeter windows) have been retained on the garage. The minor increase in height at the rear of the garage is not considered to unreasonably increase impacts on views from the public road reserve. Reasonable views are anticipated to be maintained over and between the subject site and other properties along the street.

- **Geotechnical and Coastal Engineering Concerns**

Comment:

The original Development Application was supported by a Geotechnical Report and Coastline Bluff Hazard Management Report (prepared by Crozier Geotechnical Consultants), deeming the proposal to be acceptable subject to compliance with recommended conditions.

The subject modification is supported by a letter by Crozier Geotechnical Consultants that *"The proposed changes to the original design do not significantly alter the geotechnical aspects of the proposed development or the site from those on which the original report was based. Including the recommendations for review of design and regular inspections of site works. Therefore, we see no geotechnical reason for these changes not to be approved, provided all works are undertaken as per the recommendations of our reports."*

The recommendations of the original report will remain on the consent. Council's Coast and Catchments Officer and Development Engineer has reviewed the proposal and has found the modifications acceptable subject to compliance with recommended conditions.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Solid Fuel/Oil Heater)	General Comments The original approval DA2020/0318 contained a condition: 44. Installation of solid/fuel burning heaters No approval is granted for the installation of a solid/fuel burning heater. Reason: To preserve the amenity and environmental health of adjoining properties The proposed mods SEE and plans make no relevant changes to this and this condition remains. Therefore Environmental Health supports the proposal without further conditions
Landscape Officer	The application is for modification of development consent DA2020/0318, as described and illustrated in reports and plans, including updated Landscape Plans. Amended Landscape Plans are submitted in response to the concerns raised in the previous Landscape Referral, and as adjusted the Landscape Plans raise no further concerns. Condition 1. Approved Plans and Supporting Documentation, under Landscape Plans, shall be updated to reflect the latest Landscape Plans prepared by Site Design + Studios. Condition 40. Landscape completion, shall be updated to reflect the documents issued under the modifications, being identification of the documents from L-01 to L-08 inclusive in the development consent, to L-01 to L-08 inclusive in the modification application.
NECC (Bushland and Biodiversity)	AMENDED COMMENTS 15/08/2023 Amended landscape plans have been submitted and indicate a total of 70.76% of plants to be native. The proposal is unlikely to impact native flora and fauna. The development is proposed in the area of least impact on native vegetation and where there will be no net loss of native vegetation. The proposed development is designed, sited and will be managed to avoid an adverse impact. ORIGINAL COMMENTS 14/03/2023 The proposal seeks approval for modification of Development Consent DA2020/0318 granted for Alterations and additions to a dwelling house including swimming pool. The comments on this referral relate to the following controls and provisions: • Pittwater LEP Clause 7.6 (Biodiversity Protection) • Pittwater DCP Clause B4.3 (B4.3 Flora and Fauna Habitat Enhancement Category 2 Land) • State Environmental Planning Policy (Coastal Management) 2018 Cl. 13 Development on land within the coastal environment area As per previous biodiversity comments the proposal is unlikely to impact native flora and fauna. However, amendments to the landscape plan are required to comply with consent conditions of DA2020/0318 as the proposed landscaping schedule does not achieve the required 60% native species target. Species such as Waterhousia and Alpinia are not part of the native species on relevant planting guides.
NECC (Coast and Catchments)	SUPPORTED WITHOUT CONDITIONS The modification application has been assessed in consideration of the: • Plans and supporting documents lodged with the application; • Coastal Management Act 2016;

Internal Referral Body	Comments
	- State Environmental Planning Policy (Resilience & Hazards) 2021; and - Pittwater LEP 2014 and Pittwater 21 DCP, From a coastal management perspective, proposed modifications the subject of this application do not alter the coastal referral response provided for the original consent (DA2020/0318). Consequently no coastal conditions additional to those already applied are recommended for this modification application. Amended Plans Submitted 11/08/2023 The amended plans submitted for this modification application do not alter the coastal referral response provided for the original consent (DA2020/0318). No new or amended coastal conditions are recommended for this modification application.
NECC (Development Engineering)	The proposed modifications do not alter the original assessment of the application by Development Engineering. Development Engineering support the proposal with no additional or modified conditions of consent recommended. Amended plans submitted 11/08/2023 The amendments do not alter the original assessment of the application by Development Engineering. Development Engineering support the proposal with no additional or modified conditions of consent recommended.
NECC (Riparian Lands and Creeks)	This application was assessed in consideration of: - Supplied plans and reports; - Coastal Management Act 2016; - State Environmental Planning Policy (Resilience and Hazards) 2021; - Relevant LEP and DCP clauses; and - Northern Beaches Council Water management for development policy. The modifications are minor and not expected to impact the riparian environment
Road Reserve	It is noted that the existing driveway and pedestrian entry will be retained. There are no works on the road reserve hence there is no impact on existing road infrastructure assets. The assessing officer should consider The Serpentine is on the Pittwater Scenic Streets Register and it is noted that the proposed garage within the property boundary will obstructs views from the street.
Traffic Engineer	there are no Traffic Engineering concerns relating to the modification
External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.A475809 dated 12/02/2023).

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) 2021Ausgrid

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) 2021Chapter 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 works are not likely to cause an adverse impact upon the matters identified in this clause. The proposed works do not discourage public access or amenity along the foreshore area nor impact on natural foreshore processes.

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

Comment:

Council is satisfied the proposed works are designed, and can be managed, to avoid adverse impacts based upon the matters identified in this clause.

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

- 1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:

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

Comment:

The proposed development is not likely to cause an impact on the existing access along the foreshore for members of the public, including persons with a disability and will not cause any overshadowing, wind tunnelling or unreasonable impact on the loss of views from public places to foreshores. The visual amenity and scenic qualities of the coast, including the coastal headlands will be preserved. The proposed development will also not have an adverse impact on the cultural and built environment heritage.

It is considered that the proposed development has satisfied the requirement to be designed, sited and will be managed to avoid an adverse impact to the aforementioned cultural and environmental aspects.

Furthermore, the proposed development is considered to be of an acceptable bulk, scale and size that is generally compatible with the surrounding coastal and built environment, which consist of low-density residential dwellings and ancillary structures.

The proposed works are not likely to cause an adverse impact upon the matters identified in this clause.

A condition of consent has been placed to stop works and report the findings to the AHO if and Aboriginal Engravings or Relics are unearthed.

Division 5 General

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

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

Comment:

Council is satisfied that the proposed development is unlikely to cause increased risk of coastal hazards on the subject land or other land. The application has been reviewed by Council's Coast and Catchment Officer who has raised no objection to the works.

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

Chapter 4 – Remediation of Land

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

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings	8.0m	8.45m	8.37m	4.6%	No

**Note: The original Development application was also assessed based on extrapolated ground levels for the site (pre-excavation). As such, the building height for this modification will be assessed on extrapolated ground levels for the site (pre-excavation), consistent with the original assessment (within DA2020/0318)*

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.5 Coastal risk planning	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

4.3 Height of buildings

Clause 4.3 (2) stipulates that 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 subject site is located within Area 'H' of the Height of Buildings Map which has a maximum height of 8.0m.

The maximum height of the dwelling additions within the original Development Application subject of this modification (DA2020/0318) was **8.45m**. This breach related to the south-eastern rear extremity of the new roof.

The original Development Application was assessed based on extrapolated ground levels for the site (pre-excavation). As such, the building height for this modification will be assessed on extrapolated ground levels for the site (pre-excavation), consistent with the original assessment (within DA2020/0318).

The proposed modification seeks to amend the proposed roof design and extends a portion of the proposed upper level living/dining room (and associated roof) to the south (down-slope). The proposed height of the modified proposal is as follows (based on extrapolated ground levels as was assessed within the original Development Application)

- The overall height of the south-eastern extremity of the new roof would be reduced by 80mm (from RL38.950 to RL38.870). This will reduce the height breach on this portion of the dwelling to a maximum of **8.37m** above extrapolated ground levels.
- The proposed modifications will extend the proposed roof to the south (down-slope) by up to 1.2m. This will result in the proposed roof over the upper floor living and dining room having maximum height of 8.3m above extrapolated ground levels. This is depicted in Figure 1 and 2 below. The remainder of the additions will comply with the 8.0m requirement from extrapolated ground levels.

SECTION A HEIGHT ANALYSIS

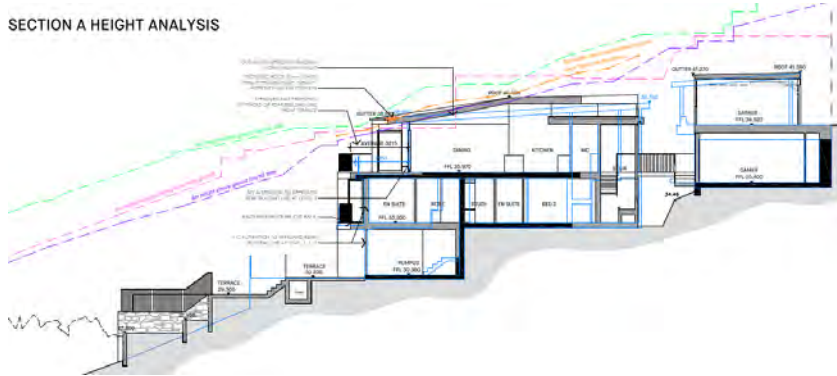


Figure 1: Section Plan - Height of building variation in orange (based off pre-existing extrapolated ground levels as assessed within DA2020/0318). Height above existing (excavated ground) levels represented by the pink line.

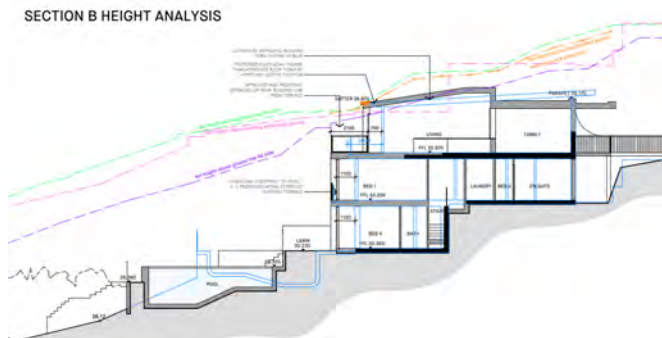


Figure 2: Section Plan - Height of building variation in orange (based off pre-existing extrapolated ground levels as assessed within DA2020/0318). Height above existing (excavated ground) levels represented by the pink line.

Assessment of Request to Vary a Development Standard

Whilst the modification application will result in a building height that exceeds the maximum permitted by Clause 4.3 of the Pittwater LEP 2014, the application does not strictly need to address the requirements of Clause 4.6 of PLEP 2014.

The application has been made under Section 4.55 of the Environmental Planning and Assessment (EPA) Act 1979, which is a free standing provision that in itself authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as the substantially the same test and consideration of all relevant Section 4.15 matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application.

Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. As such, the applicant is not required to submit a written request adequately addressing the matters required to be demonstrated by cl 4.6(3).

Notwithstanding that Clause 4.6 does not apply to Section 4.55 modification applications, the merits of the variation have been assessed with regard to the objectives of the height of buildings development standard and the underlying objectives of the C4 Environmental Living zone.

The underlying objectives of the standard, pursuant to *Clause 4.3 – 'Height of buildings'* of the PLEP 2014 are:

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

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

Comment:

As discussed throughout this report, the proposed changes subject of this modification represent a relatively modest change in built form and the amended scheme is considered to maintain consistency with the intent of the Bilgola Locality Statement. The vast majority of the proposal will be below the height of building requirement. The proposed height non-compliance is largely contained to the southern portion of the building as the land falls away, and will relate to a minor section of the roof form. The development proposes to maintain a similar building footprint as to what exists. The rear setback and proposed vegetation buffer also allows for some visual relief towards Bilgola Beach and the adjoining reserve. As such, the building height breach is not considered to impact on the desired character of the locality.

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

Comment:

The development is located on the downward slope of the The Serpentine escarpment which is characterised by undulating topography. This results in variable built forms along the road, such that there is an eclectic mix of height and scale in which to be compatible with. The non-compliance is contained to the southern extremity of the new roof due to the topographical nature of the site. The non-compliance is considered to be relatively minor and does not unreasonably conflict with the height and scale of surrounding and nearby development. In this context, the proposed height non-compliance is considered to be compatible.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The submitted shadow diagrams demonstrate that the building height breaching elements will not contribute to unreasonable shadow impact on neighbouring properties. This further detailed in the section of this report relating to *Section C1.4 Solar Access* of the P21 DCP.

d) to allow for the reasonable sharing of views,

Comment:

The proposed development adequately preserves views and vistas to and from public and private places for the reasons detailed in the section of this report relating to *Clause C1.3 View Sharing* of the P21 DCP. Given associated level differences of the nearby built form, existing views and vistas are anticipated to be equitably retained.

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

Comment:

As above, the proposed changes subject of this modification represent a relatively modest change in built form to the original DA (DA2020/0318), and do not result in additional excavation. The variation to the height control occurs as a result of the siting of the existing dwelling in conjunction with the sloping topography of the site. The proposal reflects the established built form character of newer dwellings located along The Serpentine where multi-level, variably stepped houses are prevalent, due to the steep topography of the land.

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

Comment:

The proposed works will maintain consistency with the general height and scale of surrounding newer development, and further, the bulk and scale of the works are minimised as a result of the setbacks, modulation of the facades, the use of materials and design of the vaired roof form.

Proposed landscaping, in conjunction with required landscaping by recommended conditions contained within this report, will assist to visually screen the bulk and scale of the built form and integrate the built form into the landscape. The proposal will not require the removal of any significant vegetation or require any significant site disturbance or excavation to facilitate additional floor area. No heritage conservation areas or heritage items will be affected as a result of this application.

Zone Objectives

The underlying objectives of the C4 Environmental Living Zone are:

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

Comment:

The proposed works do not include any significant excavation or site disturbance to facilitate additional floor area and the proposed additions is to be largely sited within the existing building footprint. The proposal will not require the removal of any significant vegetation. The proposal respects the scale and form and relative height of other recent development within the vicinity, particularly as viewed from The Serpentine. It is considered the proposal complements the locality.

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

Comment:

The development will not have any unreasonable impact upon long distance views, and further, the development will appear as single storey as viewed in the streetscape. The setbacks maintain compatibility with the existing surrounding newer development. The proposed works do not include any significant excavation or site disturbance

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

Comment:

The development proposes no significant excavation to facilitate additional floor area and the development will appear as single storey when viewed in the streetscape. The proposal reflects the established built form character of newer dwelling located along the Serpentine where multi-level, variably stepped houses are prevalent, due to the steep topography of the land. The proposal will not require the removal of any significant vegetation and proposes additional landscaping to minimise bulk and scale and facilitate integration with the landform

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

Comment:

The proposal will not impact upon riparian or foreshore vegetation of wildlife corridors. The additions are largely sited within the existing building footprint.

7.2 Earthworks

The objective of Clause 6.2 - 'Earthworks' requires development to ensure that earthworks for which development consent is required will not

have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

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

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

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

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

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

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

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

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

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

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

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

(f) the likelihood of disturbing relics

Comment:

A condition of consent has been placed to stop works and report the findings to the AHO if any Aboriginal Engravings or Relics are unearthed.

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

Comment: The proposal has been reviewed by Council's Coastal Officer, Riparian Lands Officer, Development Engineer and Bushland & Biodiversity Officer who have raised no objection to the works and their impacts to the surrounding natural environment

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

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

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

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

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of PLEP 2014, Pittwater 21 DCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

7.5 Coastal risk planning

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

(a) is not likely to cause detrimental increases in coastal risks to other development or properties, and

Comment: The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development is not likely to cause detrimental increases in coastal risks to other development or properties.

(b) is not likely to alter coastal processes and the impacts of coastal hazards to the detriment of the environment, and

Comment: The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development is not likely to alter coastal processes and the impacts of coastal hazards to the detriment of the environment.

(c) incorporates appropriate measures to manage risk to life from coastal risks, and

Comment: The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development incorporates appropriate measures to manage risk to life from coastal risks.

(d) is likely to avoid or minimise adverse effects from the impact of coastal processes and the exposure to coastal hazards, particularly if the development is located seaward of the immediate hazard line, and

Comment: The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development is likely to avoid or minimise adverse effects from the impact of coastal processes and the exposure to coastal hazards.

(e) provides for the relocation, modification or removal of the development to adapt to the impact of coastal processes and coastal hazards, and

Comment: The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development provides for the relocation, modification or removal of the development to adapt to the impact of coastal processes and coastal hazards.

(f) has regard to the impacts of sea level rise, and

Comment: The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development has regard to the impacts of sea level rise.

(g) will have an acceptable level of risk to both property and life, in relation to all identifiable coastline hazards.

Comment: The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development will have an acceptable level of risk to both property and life, in relation to all identifiable coastline hazards.

7.7 Geotechnical hazards

Under Clause 7.7 Geotechnical Hazards, before determining a development application for development on land to which this clause applies, the consent authority must consider the following matters to decide whether or not the development takes into account all geotechnical risks:

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

Comment:

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

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

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

Comment:

The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

(b) the consent authority is satisfied that:

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

Comment:

The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent. As such, Council can be satisfied that the proposed development has been designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m	0.7m - 2.8m (Garage wall)	0.1m - 2.3m (Garage wall)	No
Rear building line	26.5m from the front boundary, or established building line	31.5m (Terrace) 30m (Pool)	34.5m (Terrace) 35.5m (Pool)	No
Side building line	2.5m (South- West)	2.1m (Pool terrace)	0.9m (Stairs) 2.1m (Pool terrace)	No

	1.0m (North- East)	1.2m (Garage)	1m (Dwelling) 1.4m (Garage)	Yes
Building envelope	3.5m (South - West)	Within Envelope	Within Envelope	Yes
	3.5m (North-East)	Outside envelope	Outside envelope	No
Landscaped area	60% (429.9sqm)	41.13% (294.7sqm) 50.4% (361.4sqm) (with variation)	50.4% (361sqm)	No (overall increase)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.3 Bilgola Locality	No	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.4 Coastline (Bluff) Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.3 Flora and Fauna Habitat Enhancement Category 2 Land	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	No	Yes
C1.5 Visual Privacy	No	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
C1.17 Swimming Pool Safety	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D3.1 Character as viewed from a public place	No	Yes
D3.3 Building colours and materials	Yes	Yes
D3.6 Front building line	No	Yes
D3.7 Side and rear building line	No	Yes
D3.9 Building envelope	No	Yes
D3.11 Landscaped Area - Environmentally Sensitive Land	No	Yes
D3.13 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D3.14 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D3.15 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

A4.3 Bilgola Locality

The proposed development consists of part a two/part three storey dwelling house, where the locality calls for two storey development. Furthermore, a section of the proposed dwelling would exceed the 8.0m building height requirement under the PLEP as specified for the Bilgola Beach area.

However, the existing development is three storeys in height and the proposed works do not result in any additional storeys. Further, the proposal involves minimal environmental impact, is set below the general tree canopy height, includes adequate building modulation and changes in finishes to minimise bulk, does not involve significant earthworks, and provides an appropriate balance between respecting the landform and encouraging development.

As such, the proposed development achieves the intention of the desired character of the area and is acceptable in this regard.

C1.3 View Sharing

Merit Consideration

Three (3) submissions were received from the following properties which included concerns regarding view loss from a private property:

- 31 The Serpentine, Bilgola Beach
- 31C The Serpentine, Bilgola Beach
- 31D The Serpentine, Bilgola Beach

The proposed development is considered against the outcomes of the control as follows:

- *A reasonable sharing of views amongst dwellings.*

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

1. Nature of the views affected

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

Comment to Principle 1:

No.31 The Serpentine

The views from 31 The Serpentine that are the concern are to the south-east of the property and include views of the ocean, land and water interface and surf break area of Bilgola Beach. The view is partially obstructed by existing vegetation, existing dwellings and power infrastructure.



Photo 1: Existing views from No.31 The Serpentine to the south-east over the subject site (balcony located off the living room).



Photo 2: Existing views from No.31 The Serpentine to the south-west (balcony located off the living room). Views are unobstructed by the proposal.

No. 31D The Serpentine

The views from 31D The Serpentine that are the concern are to the south of the property and include views of the ocean, and surf break area of Bilgola Beach. The view is partially obstructed by existing vegetation, existing dwellings and power infrastructure.



Photo 3: Existing views from No.31D The Serpentine to the south-west over the subject site (upper floor balcony located off the living room).



Photo 4: Existing views from No.31D The Serpentine to the south over the subject site (upper floor living room).



Photo 5: Existing views from No.31D The Serpentine to the south over the subject site (first floor bedroom).

No. 31C The Serpentine

The views from 31C The Serpentine that are the concern are to the south-west of the property and include views of the ocean, and surf break area of Bilgola Beach. The view is partially obstructed by existing vegetation, existing dwellings and power infrastructure.



Photo 6: Existing views from No.31C The Serpentine to the south-west over the subject site (upper floor balcony located off the living room).



Photo 7: Existing views from No.31C The Serpentine to the south-west over the subject site (upper floor living room).

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

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

Comment to Principle 2:

No.31 The Serpentine

Views are primarily obtained from the rooms orientated towards the front of the dwelling. The view of the ocean, land and water interface and surf area which is of concern is obtained from both a sitting and standing position and are over the southern front boundary. The expansive ocean, beach and headland views to the south, south-east and south-west remain unaffected by the proposal.

The views of key concern are obtained from the first floor living room and kitchen; first floor balcony located off the living room; first floor bedroom and balcony located off this bedroom.

Existing view corridors can be seen within photos 1 and 2 above.

No. 31D The Serpentine

Views are primarily obtained from the rooms orientated towards the front of the dwelling. The view of the ocean and surf area which is of concern is obtained from both a sitting and standing position and are over the southern front boundary. The expansive ocean, beach and headland views to the south, south-east and south-west remain unaffected by the proposal.

The views of key concern are obtained from the first floor bedroom and the upper floor balcony located off the primary living area.

Existing view corridors can be seen within photos 3 -5 above.

No. 31C The Serpentine

Views are primarily obtained from the rooms orientated towards the front of the dwelling. The view of the ocean and surf area which is of concern is obtained from both a sitting and standing position and are over the southern front boundary. The expansive ocean, beach and headland views to the south, south-east and south-west remain unaffected by the proposal.

The views of key concern are obtained from the ground floor bedroom and open space, and the upper floor primary living area and balcony at the front of the dwelling.

Existing view corridors can be seen within photos 6 and 7 above.

3. Extent of impact

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

Comment to Principle 3:

No. 31 The Serpentine

The view impacts for No 31 The Serpentine are only marginally increased beyond the form of the existing dwelling on the site, with some minor loss of additional water; surf zone and land and water interface, when viewed directly over and past the proposed additions. The expansive ocean, beach and headland views to the south and south-west remain unaffected by the proposal.

In consideration of the proportion of view lost in comparison to views retained, the extent of the impact is considered to be **negligible to minor**.

No. 31D The Serpentine

The view impacts for No 31D The Serpentine are only marginally increased beyond the form of the existing dwelling on the site and the built form approved within DA2020/0318, with some minor loss of additional water and surf zone, when viewed directly over and past the proposed building additions. The expansive ocean, beach and headland views over and to the side of the dwelling to the south, south-east and south-west largely remain unaffected by the proposal.

In consideration of the proportion of view lost in comparison to views retained, and that significant views will be largely retained from principle living areas, the extent of the impact is considered to be **minor**.

No. 31C The Serpentine

The view impacts for No 31C The Serpentine are only marginally increased beyond the form of the existing dwelling on the site and the built form approved within DA2020/0318, with some minor loss of additional water and surf zone, when viewed directly over and past the proposed building. The expansive ocean, beach and headland views over and to the side of the dwelling to the south, south-east and south-west largely remain unaffected by the proposal.

In consideration of the proportion of view lost in comparison to views retained, and that significant views will be largely retained from principle living areas, the extent of the impact is considered to be **minor**.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

The proposal is not considered to result in an unreasonable view loss to surrounding neighbours and will satisfy the provisions of this clause. A reasonable sharing of view is considered to be retained. The minor section of the southern extremity of the proposed roof which is above the Council's 8.0m height control is not considered to create any significant view loss impact in comparison to the entirety views retained. As described elsewhere in this report, this breach is a consequence of the site slope and the location of the existing development. Overall, the alterations and addition to the dwelling represent a relatively minor increase to the existing built form as viewed from adjoining properties and a reasonable sharing of view is considered to be retained.

No.46 & No.50 The Serpentine

No submissions were received by the neighbours the east (No.50 The Serpentine) and west (No.46 The Serpentine) with regards to view loss. Nevertheless, consideration of potential view loss is provided below.

It is anticipated that these neighbours would retain unobstructed ocean and beach views over their southern (rear) boundary from southern facing windows and private open space. In consideration of the lack of submission received, the anticipated proportion of view lost in comparison to views retained, and in consideration that the view loss would be over a side boundary, the view sharing outcome is assessed as reasonable in this instance and is supported on merit.

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

Comment:

The proposed modification seeks to alter the design of the approved garage, which includes a minor increase in height (300mm at the rear). The applicant has advised that the design changes are required to meet necessary head clearances for garage door & parking to meet relevant Australian Standards. The comparison between the approved garage built form within DA2020/0318 and the proposed built form subject of this modification can be seen in figure 1 below.

It should be noted that during the assessment of this application, amended plans were received which deleted the proposed pedestrian entry within the front setback area, lowered the garage roof and increased the extent of glazing on the facade of the garage.

Within the original development application (DA2020/0318), the extent of potential view loss from the public domain was considered as reasonable in consideration of planning principles outlined within the Land and Environment Court Case of *Rose Bay Marina Pty Limited Vs Woollahra Municipal Council and anor (213) NSWLEC 1046*. Overall, it is considered that the minor change in built form and the resultant garage is acceptable and maintains consistency with this planning principle for the following reasons:

- Transparent building materials (perimeter windows) have been retained, in accordance with Clause C1.3 *View Sharing* of the P21 DCP.
- The inclusion of a garage on site is not unreasonable, and the proposed location of the garage is the most logical and practical, considering the existing hardstand space, site topography and constraints.
- - To shift the garage south in an attempt to reduce view loss would likely not result in a significant improvement, and would require a significant redesign. It should also be noted that numerous other properties along the lower side of The Serpentine feature double garages within the front setback.
- Ocean and headland views are anticipated to be retained over and though the garage structure.
- Views are maintained over and between the subject site and other properties along the street.
- During the assessment of the application amended plans were received which deleted the proposed pedestrian entry within the front setback area to minimise the width of the structure and retain view corridors to the west of the garage. The minor increase in height at the rear is not considered unreasonable in this instance.



02 SHADED OUTLINE OF APPROVED GARAGE FORM



04 SHADED OUTLINE OF APPROVED VS PROPOSED GARAGE FORM OVERLAID

Figure 1: Photo montage of the proposed garage prepared by the applicant. Purple represents the approved built form within DA2020/0318 and the orange represents the propped built form.

- Canopy trees take priority over views.

Comment:

The proposal does not impact on any canopy trees.

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

C1.4 Solar Access

The assessment of the approved development (DA2020/0318) found that although the adjoining neighbour at No. 46 The Serpentine did not receive a compliant level of solar access throughout the day, the proposal was sited and designed to allow reasonable solar access to the adjoining property and achieve the outcomes of the control. The non-compliance with this control was primarily attributed to the orientation of the site and due to the site being in self-shadow in the afternoon as a result of the steep topography of the land.

The proposed modification will result in a minor increase in overshadowing to the rear private open space of No. 46 The Serpentine in the morning and a minor decrease in overshadowing to this neighbour in the early afternoon. On balance, the proposed modifications are not considered to result in unreasonable additional overshadowing, and the assessment of this control within the original Development Application remains applicable.

In summary, the proposal provides a reasonable level of solar access to the subject site and surrounding sites, considering the site's slope and context.

The level of overshadowing resulting from the proposed development is a product of the steep topography of the site and the surrounding land. In this way, overshadowing impacts on the property to the south-west are inherently exacerbated compared to flat land. The proposed additions would be situated atop of the existing footprint of the dwelling. The location of these additions is considered reasonable and appropriate given the siting of the existing building and constraints of the site. The proposal would maintain significant setback from the southern (rear) boundary and would maintain compliant side setback and envelope adjacent to the western boundary.

The proposed development is acceptable in relation to the relevant built form controls within the P21 DCP, for the reasons detailed throughout this report. In this way, the proposed development is reasonable in its context.

Overall, the proposal represents a modest increase to the existing built form which is sited and designed to provide reasonable solar access in consideration of the topography of the site and surrounding areas.

C1.5 Visual Privacy

Description of Non-compliance

Clause C1.5 of the P21DCP stipulates that private open space areas and windows of adjoining properties are to be protected from direct overlooking within 9.0m by building layout, landscaping, screening devices or greater spatial separation.

Merit Assessment

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

- **No.46 The Serpentine**

Entry (Upper) Level Balcony

The original Development Application (DA2020/0318) required that the upper "entry level" balcony is to incorporate solid balustrading on the south-western elevation to avoid downward overlooking into the private open space of No.46 The Serpentine when in a sitting position and when standing back from the edge of the decks. This condition will remain on the consent.

Side Facing (south-western) Windows

The proposed "bedroom level" south-western window (W2.7) to the stairwell would be within 4m of the side boundary and private open space of the adjoining neighbour to the south-west (No.46 The Serpentine). In order to minimise privacy impacts and mitigating direct overlooking, it is recommended a condition be imposed for this window to install privacy screening of louvre style construction (with a maximum spacing of 20mm), or be obscure glazed.

The proposed "bedroom level" south-western glazed door to the laundry (D2.3) would be within 4m of the side boundary and private open space of the adjoining neighbour to the south-west (No.46 The Serpentine). In order to minimise privacy impacts and mitigating direct overlooking, it is recommended a condition be imposed for this door to solid or obscure glazed.

Other side facing windows have been deleted. As such condition 13 of the original Development Application (DA2020/0318) will be updated accordingly to reflect the modified plans.

Pool and Terrace Area

The landscape plan denotes the provision of additional landscape treatment and screen planting, particularly along the south-western side boundary which will assist in the mitigation of overlooking opportunities to the pool and terrace area.

Subject to recommended conditions, the privacy impacts are considered to be reasonable within a residential environment.

- **No. 50 The Serpentine**

Balconies

The proposal predominantly retains the existing balcony arrangement directly adjoining this neighbour (No.50). The minor increase to the upper level balcony is sited centrally and is not considered to result in unreasonable privacy impacts.

Side Facing Windows

The proposed "bedroom level" north-eastern windows to "Bed 2" (W2.1) and "Ensuite" (W2.2) would be within 3m of the side boundary and windows and private open space of the adjoining neighbour to the north-east (No.50 The Serpentine). In order to minimise privacy impacts and mitigating direct overlooking, it is recommended a condition be imposed for these windows to install privacy screens of louvre style construction (with a maximum spacing of 20mm), or be either high sill (i.e. containing a sill height of 1.65m from the FFL) or obscure glazed.

The proposed "bedroom level" north-eastern windows to "Bed 1 Robe" (W2.4) would be within 3m of the side boundary and private open space of the adjoining neighbour to the north-east (No.50 The Serpentine). In order to minimise privacy impacts and mitigating direct overlooking, it is recommended a condition be imposed for this window to install privacy screens of louvre style construction (with a maximum spacing of 20mm), or be either high sill (i.e. containing a sill height of 1.65m from the FFL) or obscure glazed.

All other windows on this elevation are proposed to have suitable treatment (privacy screening and obscured glazing) to mitigate potential privacy impacts. Additionally, no submissions in relation to privacy have been received by this neighbour.

Other side facing windows have been deleted. As such condition 13 of the original Development Application (DA2020/0318) will be updated accordingly to reflect the modified plans.

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

D3.1 Character as viewed from a public place

Description of Non-Compliance

The proposed modification seeks to alter the design of the approved garage, which includes a minor increase in height and reduced front setback. The applicant has advised that the design changes are required to meet necessary head clearances for garage door & parking to meet relevant Australian Standards.

It should be noted that during the assessment, amended plans were received which deleted the proposed pedestrian entry within the front setback area, lowered the garage roof and increased the extent of glazing on the facade of the garage.

It should also be noted that the location of this garage is a result of the site's topography, existing site constraints and access gradients that limit the siting opportunities of such structure. Furthermore, the siting of the garage structure is consistent with a permitted variation prescribed by the front building line development control, which allows parking forward of the front building line on steeply sloping sites.

Overall, it is considered that the amended garage design is consistent with the assessment of the original Development Application (DA2020/0318) as outlined below:

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 garage is reasonably sited within the context of the site, as well as that of the streetscape. The garage will provide for two (2) compliant on-site parking spaces, which is consistent with surrounding development and satisfies the desired 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.***

Comment:

The proposed garage is appropriately sited atop of the existing hardstand space such that site disturbance is minimised and the visual outcome of the development will remain consistent and comparable with that of other properties along the lower side of The Serpentine. The garage has been designed to minimise bulk and scale and where possible, transparent building materials have been used to facilitate an open design. Further, no significant vegetation removal is required to facilitate the works, therefore the development is considered to respond to, reinforce and sensitively relate 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.***

Comment:

The proposed modification seeks to alter the designed of the approved garage, which includes a minor increase in height. The applicant has advised that the design changes are required to meet necessary head clearances for garage door & parking to meet relevant Australian Standards. The bulk and scale of the garage will generally be in keeping with the original approval with that of other properties along the lower side of The Serpentine.

- ***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.***

Comment:

The proposal does not require any significant vegetation to be removed as part of the application. The location of the garage atop an existing hardstand space would limit the need to remove vegetation that may be required for a compliant development.

- ***High quality buildings designed and built for the natural context and any natural hazards.***

Comment:

The garage has been designed to minimise bulk and scale and where possible, transparent building materials have been used to facilitate an open design. The proposed development will be conditioned to meet all relevant Australian Standards and BCA requirements. It is therefore anticipated the works to be high quality 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.***

Comment:

The development will appear as storey as viewed from the street, due to the steep cross fall of the site away from the frontage. The slope of the site means that the garage would be below average eye level when viewed from the street and would appear "human scale".

- ***To preserve and enhance district and local views which reinforce and protect the Pittwater's natural context.***

Comment:

This matter has been addressed elsewhere in this report (refer to *Clause C1.3 View Sharing* under Pittwater Development Control Plan). In summary, the proposed garage is not considered to result in unreasonable view loss.

- ***To enhance the bushland vista of Pittwater as the predominant feature of the landscape with built form, including parking structures, being a secondary component.***

Comment:

As above, the proposal does not require any significant vegetation to be removed as part of the application. The location of the garage atop an existing hardstand space would limit the need to remove vegetation that may be required for a compliant development. Landscaping is proposed to be enhanced to assist in the softening of the built form.

- ***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 discussed elsewhere in this report (refer to *Clause C1.3 View sharing*), the proposal will proportionately hinder the availability of ocean views from the streetscape.

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

D3.6 Front building line

Description of Non-Compliance

The proposed development is inconsistent with the 6.5m minimum front building line prescribed by this development control, with the proposed garage setback at a distance of between 0.1m and 2.2m from the front boundary. Within the original DA (DA2020/0318) , the proposed garage was approved with a with a setback between 0.7m and 2.8m from the front boundary.

The proposed modification application will result also result in a minor increase in height of the proposed garage. The applicant has advised that this increase in height is required to meet necessary head clearances for garage door & parking to meet relevant Australian Standards.

It should be noted that during the assessment, amended plans were received which deleted the proposed pedestrian entry within the front setback area.

Pittwater 21 DCP contains a variation clause which reads as follows:

- ***Where carparking is to be provided on steeply sloping sites, reduced or nil setbacks for carparking structures and spaces may be considered, however all other structures on the site must satisfy or exceed the minimum building line applicable***

The site is considered to be steep at an average gradient of 33% across the site. This is considered to warrant consideration of a reduced or nil setback for the garage to enable a parking area that is safe and practical for the resident. It should be noted that the garage is proposed to be sited atop of the existing hardstand space which would minimise the need/extent of disturbance on the environmentally sensitive site.

The location and presentation of the proposed garage is consistent with other garages along this particularly steep stretch of The Serpentine. As detailed earlier within this report under *Clause D3.1 Character as viewed from a public place*, the proposal is considered to meet the desired character of the streetscape through use of appropriate building materials, minimal built form and the enhancement of landscaping to assist in the softening of the built form. The siting of the proposed garage is supported on merit, as the proposal is compatible with the character of The Serpentine, would not facilitate additional site disturbance/removal of additional vegetation, and will not detract from consistency with the outcomes of this development control.

D3.7 Side and rear building line

Description of non-compliance

Clause D3.7 *Side and Rear Building Line* prescribes a side setback of 2.5m to one side and 1.0m to the other, and a rear building line of 26.5m from the front boundary.

The proposed swimming pool and associated pool coping and stairs is set back a minimum of 2.1m from the western side boundary, failing to comply with the 2.5m requirement. The proposed swimming pool and associated terrace is also 30m from the front boundary failing to comply with the 26.5m requirement.

The proposed modification also proposes new access stairs which are setback 0.9m from the western side boundary, failing to comply with the 2.5m requirement.

All other proposed works exhibit compliance with the numerical requirements of this clause.

Merit Consideration

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

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

Comment

The non-conforming element is minor in scale, and will not disrupt the desired future character of the Bilgola Locality. The proposed development will maintain a low density residential build, with adequate spatial separation to the adjoining dwelling houses.

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

Comment

The proposed pool, stairs and terrace are open structures of minimal bulk and scale and are not considered to result in unacceptable bulk and scale of the overall development.

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

Comment

The encroachment into the side setback area is not considered to result in any unreasonable view loss from surrounding private properties or the public domain.

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

Comment

As mentioned above, the proposed development will not cause a detrimental impact to the preservation of views.

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

Comment

The side setback encroachments are not considered to unreasonably impede on the amenity or solar access to the neighbouring properties. Privacy has been addressed in further detail elsewhere within this report (refer to *Clause 1.5 Visual Privacy*).

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

Comment

The proposal does not require any significant vegetation to be removed as part of the application. The application has been reviewed by Council's Bushland and Biodiversity Officer and Landscape Officer who have raised no objection to the proposal subject to recommended conditions.

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

Comment

The proposal maintains adequate access to the dwelling, the encroachment will actually enhance mobility within the private open space areas located on site.

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

Comment

Vegetation is retained at an acceptable level to reduce any perceivable bulk and scale. Additional vegetation is proposed along the side boundary.

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

Comment

The subject site is located in and is surrounded immediately by residential and environmental protection zones, this outcome does not apply.

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.

D3.9 Building envelope

Description of Non-compliance

This clause stipulates that buildings are to be projected at 45 degrees from 3.5m above the existing ground level, measured from the side boundaries.

The subject modification includes works which protrude outside the prescribed building envelope along the north-eastern elevation. The works also include a reduction to approved building envelope non-compliance along this elevation. Figure 1 represent additional envelope encroachment subject of these modifications (highlighted in dark blue). Figure 2 represents the approved envelope non-compliance along the north-eastern elevation (as approved within DA2020/0318).

This building envelope non-compliance is largely attributed to the slope of the site and the existing built form which currently has an building envelope breach on this elevation.

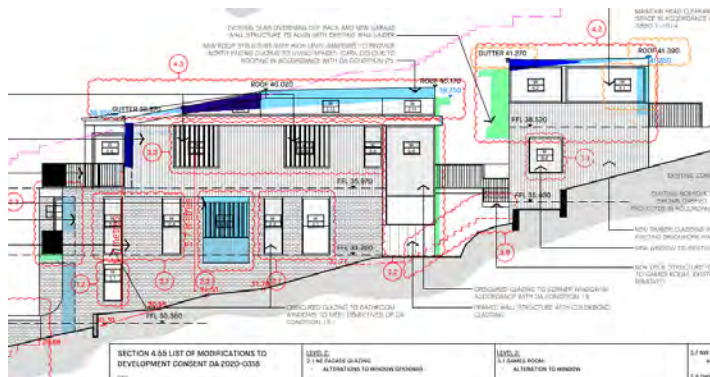


Figure 1 - Proposed additional building envelope non-compliance on the north-eastern elevation (highlighted in dark blue). Green represents areas of reduced built form.

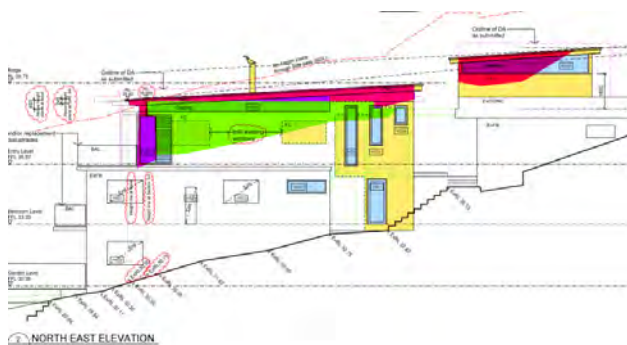


Figure 2: Approved breach on the north-eastern elevation shown in pink (as approved within DA2020/0318), existing envelope breach (of existing building) shown in green

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 development is considered to be appropriate within its context, consistent with the bulk and scale of surrounding development in the locality and generally in keeping 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 modifications will be generally consistent with the form of the approved dwelling and garage. The proposed development is generally set below the height of the trees adjoining the site and in the locality. It is considered that the bulk and scale of the proposal would not be out of character with the existing streetscape and wider locale.

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

Comment:

The dwelling additions are primarily situated within the footprint of the existing building. Further, no significant vegetation removal is required to facilitate the works, therefore the development is considered to respond to, reinforce and sensitively relate to the spatial characteristics of the existing built and natural environment.

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

Comment:

The breach in the side boundary envelope is generally caused by the slope of the site and location of the existing built form. When viewed from the street, the dwelling and garage will present as a single storey structure. The dwelling is appropriately articulated and incorporates balconies, changes in roof formation and variation in materials and colours to break up built form. Furthermore, the modification has introduced additional landscaping to minimise the visual impact of the development from adjoining properties and the public realm, most notably on the north-eastern boundary.

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

Comment:

The proposed development adequately preserves views and vistas to and from public and private places for the reasons detailed in the section of this report relating to Clause C1.3 View Sharing of the P21 DCP. The envelope breach on the northern elevation is not considered to result in unreasonable view loss to adjoining neighbours.

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

Comment:

As detailed elsewhere within this report (refer to Clause C1.5 Visual privacy and C1.4 Solar access), a reasonable level of privacy, amenity and solar access is maintained by the residents of the subject site and the adjoining dwellings. Furthermore, the proposal would introduce additional landscaping along the side boundaries to minimise the visual impact of the development to the adjoining neighbour to assist in the preservation of residential amenity.

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

Comment:

The application is supported by a landscape plan, which demonstrates an enhancement of vegetation and landscaping to screen and soften the resultant built form. The application has been reviewed by Council's Bushland and Biodiversity Officer and Landscape Officer who have raised no objection to the proposal subject to recommended conditions and replacement planting. Overall, retained and proposed vegetation and the conditioned replacement planting would appropriately break up the building massing and reduce the visual impact of the proposal.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979.

Accordingly, this assessment finds that the proposal is **supported**, in this particular circumstance.

D3.11 Landscaped Area - Environmentally Sensitive Land

The proposal results in an increase to the approved landscaped area. Despite remaining non-compliant with the 60% control, the increase in the approved landscaped area is considered to achieve consistency with the outcomes of the control. The proposal has been reviewed by

Council's Landscape Officer who has raised no objection to the application (subject to conditions).

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

PLANNING CONCLUSION

The application seeks to modify Development Consent No.DA2020/0318 granted for alterations and additions to a dwelling house, including a swimming pool.

The application is referred to the Development Determination Panel (DDP) due to five (5) objections being received in response to the notification.

The concerns raised in the objections have been addressed by amended plans and additional information, as well as imposed conditions of consent.

On the balance, although the proposed development is non-compliant with a number of planning controls, it is considered that many of these are a consequence of the context of the site and the existing built form. Overall, it is considered that the proposed modifications represent a relatively modest increase to the existing built form and that approved within Development Consent No.DA2020/0318. The proposed works do not include significant site disturbance or environmental impact to facilitate additional floor area as the proposed additions are largely sited upon the existing building footprint.

Subject to the recommended conditions of consent, it is considered that the amended design of the proposal would result in a development that displays reasonable scale and density compatible with the surrounding development of The Serpentine and would not result in unreasonable amenity impacts to surrounding properties.

Accordingly, the application is referred to the DDP with a recommendation for **APPROVAL**.

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2023/0093 for Modification of Development Consent DA2020/0318 granted for Alterations and additions to a dwelling house including swimming pool. on land at Lot 102 DP 16393,48 The Serpentine, BILGOLA BEACH, subject to the conditions printed below:

Modification Summary

The development consent is modified as follows:

MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
PAN-309224 MOD2023/0093	The date of this notice of determination	- Add Condition No.1A (Modification of Consent - Approved Plans and supporting documentation) - Add Condition 26A (Construction Traffic Management Plan) - Add Condition 29A (Work Zones and Permits) - Add Condition 39A (Ongoing Management) - Modify Condition 13 (Amendments to the approved plans) - Modify Condition 40 (Landscape completion)

Modified conditions

A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting documentation, to read as follows:

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Modification Approved Plans

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
SERP-DA-100	Rev.D	SITE PLAN + LEVEL 4: GARAGE + DWELLING ROOF PLAN	NICK BELL ARCHITECTS	14/06/2023
SERP-DA-101	Rev.D	LEVEL 3: ENTRY AND LEVEL 2: BEDROOM LEVEL FLOOR PLANS	NICK BELL ARCHITECTS	14/06/2023
SERP-DA-102	Rev.D	LEVEL 1: REAR GARDEN LEVEL FLOOR PLAN	NICK BELL ARCHITECTS	14/06/2023
SERP-DA-200	Rev.D	NORTH-WEST AND NORTH-EAST ELEVATIONS	NICK BELL ARCHITECTS	14/06/2023
SERP-DA-201	Rev.D	SOUTH-EAST AND SOUTH-WEST ELEVATIONS	NICK BELL ARCHITECTS	14/06/2023
SERP-DA-202	Rev.D	SECTION A, SECTION B AND SECTION C	NICK BELL ARCHITECTS	14/06/2023
SERP-DA-900	Rev.E	MATERIALS AND FINISHES SCHEDULE	NICK BELL ARCHITECTS	14/06/2023

Engineering Plans		
Drawing No.	Dated	Prepared By
1994-C01 - Concept Stormwater Layout	17/01/2023	R. Balas Consulting P/L

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Assessment for Section 4.55	01/08/2023	Crozier Geotechnical Consultants
BASIX Certificate (A475809)	17/02/2023	Nick Bell D&A

c) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

d) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

The development is to be undertaken generally in accordance with the following:

Landscape Plans		
Drawing No.	Dated	Prepared By
L-01 Issue.D (Site Plans)	01/08/2023	Site design+Studios
L-02 Issue.D (Entry Level)	01/08/2023	Site design+Studios
L-03 Issue.D (Bedroom Level)	01/08/2023	Site design+Studios
L-04 Issue.D (Lower Ground Floor)	01/08/2023	Site design+Studios
L-05 Issue.D (Planting Details)	01/08/2023	Site design+Studios
L-06 Issue.D (Notes)	01/08/2023	Site design+Studios
L-06 Issue.D (Specification)	01/08/2023	Site design+Studios

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

B. Add Condition 26A (Construction Traffic Management Plan) to read as follows:

As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared prior to issue of any Construction Certificate.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- Details for loading and unloading of materials
- Provision of parking for workers which ensure traffic safety
- Details for maintaining access to adjacent properties
- The proposed method of access to and egress from the site for construction vehicles, for the purpose of minimising traffic congestion.
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking onsite.
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- Take into consideration the combined construction activities of other development in the surrounding area.
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- The location and operation of any on site crane

The Construction Traffic Management Plan shall be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

C. Add Condition 29A (Work Zones and Permits) to read as follows:

Prior to commencement of the associated works, the applicant shall obtain a Work Zone Permit where it is proposed to reserve an area of road pavement for the parking of vehicles associated with a construction site. A separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane.

Reason: To ensure Work zones are monitored and installed correctly.

D. Add Condition 39A (Ongoing Management) to read as follows:

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.

E. Modify Condition 13 (Amendments to the approved plans) to read as follows:

The following amendments are to be made to the approved plans:

(a) **"Entry Level" Balcony** - The upper "entry level" balcony is to incorporate solid vertical louver balustrading on the south-western elevation angled to avoid overlooking of the adjoining property and constructed of non-transparent material or opaque glazing measured at a height of at least 1.0m above the finished floor level.

(b) **"Bedroom Level" Door (D2.3)** - The "bedroom level", south-western door (labelled D2.3) adjoining the laundry shall be of solid construction, or obscured glazing.

(c) **"Bedroom Level" Window (W2.7)** - A privacy screen is to be installed on the "bedroom level", south-western window (labelled W2.7) adjoining the stairwell as shown on the approved plans. The privacy screen shall be of horizontal louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development. Alternatively, this windows shall be fitted with obscured glazing.

(d) **"Bedroom Level" Windows (W2.1 & W2.2)** - Privacy screens are to be installed on the "bedroom level", north-eastern windows (labelled W2.1 & W2.2) adjoining "Bed 2" and "Ensuite" as shown on the approved plans. The privacy screens shall be of horizontal louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development. Alternatively, these windows shall be fitted with obscured glazing or have a minimum sill height of 1.65m above the Finished Floor Level.

(e) **"Bedroom Level" Window (W2.4)** - A privacy screen is to be installed on the "bedroom level", north-eastern window (labelled W2.4) adjoining the "Bed 1 Robe" as shown on the approved plans. The privacy screen shall be of horizontal louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development. Alternatively, this window shall be fitted with obscured glazing or have a minimum sill height of 1.65m above the Finished Floor Level.

(f) **Pool Fencing** - The pool fencing shall be located entirely within the subject site and be set back a minimum of 2.0m from the south-western boundary (adjoining No.46 The Serpentine).

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

F. Modify Condition 40 (Landscape completion) to read as follows:

Landscape works are to be implemented in accordance with the approved Landscape Plans L-01 to L-07 (Issue D) inclusive, prepared by Site Design Studios, inclusive of the following conditions:

- i) tree planting shall be installed at 75 litre container size, located within a 9m2 deep soil area and be located a minimum of 5 metres from existing and proposed buildings, and at least 3 metres from other trees,
- ii) tree planting shall be located to minimise significant impacts on neighbours in terms of blocking winter sunlight, or where the proposed tree location may impact upon significant views.

Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: environmental amenity.



