

AGENDA

NORTHERN BEACHES LOCAL PLANNING PANEL

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

WEDNESDAY 1 NOVEMBER 2023

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



Peter Robinson
Executive Manager Development Assessment

Quorum

A quorum is three Panel members

Conflict of Interest

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

Agenda for the Northern Beaches Local Planning Panel to be held on Wednesday 1 November 2023

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ACKNOWLEDGEMENT OF COUNTRY

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

1.0 APOLOGIES & DECLARATIONS OF INTEREST

Nil

2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 18 OCTOBER 2023

RECOMMENDATION

That the Panel note that the minutes of the Northern Beaches Local Planning Panel held 18 October 2023 were adopted by the Chairperson and have been posted on Council's website.

4.0 PUBLIC MEETING ITEMS

ITEM 4.1	DA2022/1164 - 34-35 SOUTH STEYNE, MANLY - DEMOLITION AND CONSTRUCTION OF A COMMERCIAL BUILDING
AUTHORISING MANAGER	Rod Piggott
TRIM FILE REF	2023/676529
ATTACHMENTS	<ol style="list-style-type: none">1 Assessment Report2 Site Plan & Elevations3 Clause 4.64 Design & Sustainability Advisory Panel Report

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2022/1164 for demolition and construction of a commercial building on land at Lot B DP 102407, 34 - 35 South Steyne, MANLY and Lot 2 DP 861591, 34 - 35 South Steyne, MANLY subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1164
Responsible Officer:	Alex Keller
Land to be developed (Address):	Lot B DP 102407, 34 - 35 South Steyne MANLY NSW 2095 Lot 2 DP 861591, 34 - 35 South Steyne MANLY NSW 2095
Proposed Development:	Demolition and construction of a commercial building
Zoning:	Manly LEP2013 - Land zoned E1 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Gwynvill Properties Pty Ltd
Applicant:	34-35 South Steyne Pty Limited
Application Lodged:	28/07/2022
Integrated Development:	Yes
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	13/03/2023 to 18/04/2023
Advertised:	17/03/2023
Submissions Received:	19
Clause 4.6 Variation:	4.3 Height of buildings: 42%
Recommendation:	Approval
Estimated Cost of Works:	\$ 11,075,000.00

EXECUTIVE SUMMARY

This development application seeks consent for demolition works and construction of a commercial building, including basement levels and underground carparking. The site is located within the Heritage Conservation Area and fronts South Steyne at Manly, with rear frontage to Rialto Lane.

The application is referred to the *Northern Beaches Local Planning Panel* (NBLPP) due to more than 10 objections and a building height variation that exceeds 10%.

Concerns raised in the objections predominantly relate to views, traffic and parking, dilapidation risk, building height, safety (during construction), building bulk and public amenity of foreshore area.

Critical assessment issues included views, building height variation, traffic and carparking, streetscape within the heritage conservation area, facade design (including awnings), residential amenity (during works) and construction management. To address view sharing / view loss the applicant re-approached the building design and view issues after concerns were raised about different viewing angles. The applicant undertook further analysis of view lines in context with overall proposed design, DCP and LEP controls. This resulted in reshaping the top storey to prioritise a diagonal view line (north) toward Queenscliff headland and limiting the movement of floor space forward, that would affect other sensitive views (east) directly in front, by other apartments behind the site. The roof area was also simplified with less 'clutter', deleting a rooftop pool proposed and revising the rooftop planting component to assist amenity.

The 4.6 request for the non-compliance with height standard arises from the dual height control envelope (10m and 12m) across the site, view considerations to accommodate competing view elements, as well as the permitted FSR for the zone and standard commercial floor to ceiling height that influence overall height and bulk. The proposal has been amended during the assessment period to rationalise floor layouts as well as accommodate views. The design response includes a front terrace area with the upper storey reshaped but still above the 10m height control and partly above the 12m height control at the rear.

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

PROPOSED DEVELOPMENT IN DETAIL

This application seek approval for the following development work and land use:

- Demolition of the existing site structures site preparation and excavation works,
- Construction of a 3-4 storey commercial building over 2 basement levels, comprising:
 - **Basement Level 2 RL -7.0:** commercial bin store, lift stair access and 13 car parking spaces, plus a loading dock, an EV charging space. (Note: The above parking arrangement includes 2 "carshare/rideshare" spaces, and 2 x car stackers in the lower basement level shown)
 - **Basement Level 1 RL 2.0 to 2.347:** 137.851m² of commercial floor space, vehicle ramp, storage, bin rooms, amenities, plant service rooms, water tank, end of trip (EOT) facilities & bicycle storage, lift and stair access, car stacker head-room, vent shaft.
 - **Ground Level RL 4.8 to 5.12:** 361.37m² of retail floor space (including service area for food and beverage) presenting to both South Steyne and Rialto Lane, basement entry from Rialto Lane, through site link connecting South Steyne and Rialto Lane, lift and stair access, storage, riser, services and lobby for upper level commercial space, fire hydrant.
 - **Level 01 RL 8.75:** 520.6m² of commercial floor space, amenities, services, balcony to South Steyne (within boundary), light well/courtyard lift and stair access, void, landscaped street awning.
 - **Level 02 RL 12.0:** 551.17m² of commercial floor space, amenities, services, balcony to South Steyne (within boundary), light well lift and stair access.
 - **Level 03 RL 15.75:** 220.38m² of commercial floor space, amenities, services, plant equipment, and roof terrace, roof planting, lift and stair access, light well.

(Originally the proposal included an outdoor pool on Level 3 however this has been deleted)

- **Upper Roof RL 19.0:** Roof plant enclosure and Lift overrun at RL19.7.
- Total Commercial Floor Space of 1,791sqm (see floor plans)
- No signage is proposed and no 'hours of operation' are nominated for F&B or office areas.
- Landscaping elements (upper landscaped planter edges RL16.3), stormwater infrastructure and ancillary site works.
- Site consolidation (by condition).

(Note: Architectural drawing index dates for revision DA-D is "31.7.27" which appears to be a misprint given the print date is "9.8.2023". Therefore, the revision date is considered to be 27.7.2023, as per previous revision date formats.)

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 - 5.10 Heritage conservation
Manly Local Environmental Plan 2013 - 6.1 Acid sulfate soils
Manly Local Environmental Plan 2013 - 6.2 Earthworks
Manly Local Environmental Plan 2013 - 6.11 Active street frontages
Manly Local Environmental Plan 2013 - 6.12 Essential services
Manly Local Environmental Plan 2013 - 6.13 Design excellence
Manly Local Environmental Plan 2013 - 6.16 Gross floor area in Zone B2

Manly Development Control Plan - 3.1 Streetscapes and Townscapes
 Manly Development Control Plan - 3.1.3 Townscape (Local and Neighbourhood Centres)
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 3.9 Mechanical Plant Equipment
 Manly Development Control Plan - 4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)
 Manly Development Control Plan - 4.2.3 Setbacks Controls in LEP Zones B1 and B2
 Manly Development Control Plan - 4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor
 Manly Development Control Plan - 4.2.5.1 Design for Townscape
 Manly Development Control Plan - 4.2.5.2 Height of Buildings: Consideration of Townscape Principles in determining exceptions to height in LEP Zone B2 in Manly Town Centre
 Manly Development Control Plan - 4.4.3 Signage
 Manly Development Control Plan - 4.4.4.1 Awnings in LEP B1 and B2 Business Zones
 Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)
 Manly Development Control Plan - 5 Special Character Areas and Sites

SITE DESCRIPTION

Property Description:	Lot B DP 102407 , 34 - 35 South Steyne MANLY NSW 2095 Lot 2 DP 861591 , 34 - 35 South Steyne MANLY NSW 2095
Detailed Site Description:	<p>The site is irregularly shaped and comprises two Torrens Title lots with a combined 15.305m wide frontage to South Steyne and a maximum depth of 46.815m and a total combined area of 690.2 square metres (sqm). The site is generally level and is partially affected by flooding influenced by the surrounding stormwater systems, ground water table and low lying position of the land adjacent the ocean mean high water mark.</p> <p>A two storey commercial building currently occupies the site, with at-grade parking at the rear. The site has narrow frontage to Rialto Lane at the rear with a 3.0m right of way that links to No.94 The Corso.</p> <p>The site is located within the <i>Manly Town Centre Conservation Area</i> and in the vicinity of a number of heritage items but the site itself contains no LEP listed heritage items.</p> <p>Surrounding development comprises retail, commercial, shops and restaurants. Some premises are low rise shop top housing or mixed uses near the site. A large mixed use development at No.17-25 Wentworth Street overlooks the site for residential apartment in the northern corner of that building. Ocean views in an easterly and northern-easterly direction are gained from various apartments that overlook the site toward Manly beach seashore and the coastal interface / foreshore reserve.</p>

Map:



SITE HISTORY

The applicant undertook a prelodgement meeting (PLM No.2022/0084) for the subject DA. The PLM provided the following concluding comments:

"In principle, the concept of a high quality commercial building in this location is supported and it is acknowledged the high level of detail and analysis the applicant has done to date. The inclusion of a pedestrian link to Rialto Lane is supported and the comments provided by Council's traffic engineer to address pedestrian safety at the junction of Rialto lane are to be resolved by the applicant."

Council's planner and heritage advisor have concerns regarding the façade presentation in the context of the site being within the heritage conservation area and responding to the wider Townscape of the Manly Corso and South Steyne area given the high use of glazing. The applicant is to review and incorporate the feedback and suggestions provide by Council in regard to the façade presentation prior to lodgement of the application.

The breach of building height at the front façade to match the adjoining buildings is considered reasonable and the applicant is to provide further supporting justification and environmental planning grounds within the Clause 4.6 for the breach of the 12m building height at the rear. View sharing should be maintained for the affected properties as a result of any breach of building height.

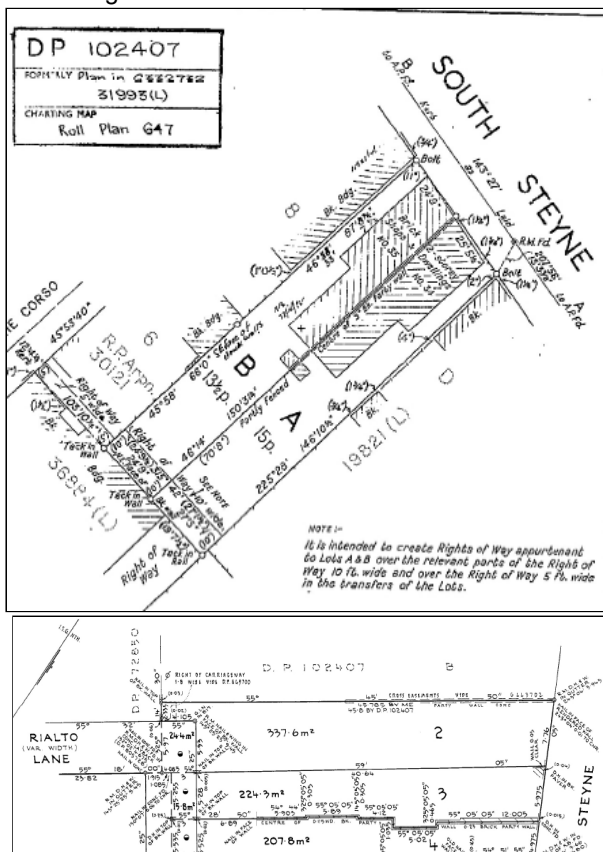
The deficiency of car parking is of concern to Council's traffic engineer and whilst some concession could be provided, the parking provision must be increased or floor area reduced (such as the basement GFA) to provide an appropriate quantum of parking."

Comment on PLM

The applicant has amended the design and provided a series of supplementary reports / additional information to address concerns raised within the PLM advice and to accommodate the review advice by DSAP.

The subject land comprises 2 lots originally occupied by dwelling houses (semi-detached). In 1996

part of Lot A (Now Lot 2) was acquired for road widening to Rialto Lane. Both lots will be required to be consolidated as part of the new redevelopment of the land. The existing 2 storey commercial building was constructed pre 1990 and has undergone a series of alterations by way of various tenancy fitouts / use changes over in recent decades.



The proposal involves complete demolition and excavation works on the site for an entirely new building. Therefore, previous building or development approvals on the site are not relevant as the property is not a heritage item.

The proposal was reviewed by Council's Design and Sustainability Advisory Panel as part of the PLM process and again after the 10 was lodged formerly (See heading "Internal Referrals - DSAP")

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report. The NSW employment zones reforms have been made and came into force on 26 April 2023. These reforms will result in this property

Section 4.15 Matters for Consideration	Comments
	changing from a B1 zone to a E1 zone. The proposed use will remain permissible in the new zone. (DCP/LEP references are therefore interchangeable in transitioning to the changes made by the Department of Planning)
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Mainly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Following initial Advertising and notification, information was requested in relation to Council DSAP review, traffic engineering issues, heritage, streetscape and view impacts (including objection concerns). The applicant also made changes to simplify the design and layout elements including altering the internal stair foyer, deletion of the roof pool and rationalising floor layouts. The amended plans (Revision DA-D 27 Jul) were re-notified pursuant to the Community Participation plan to address view sharing issues at the top storey and minor revisions prompted by Council referral / assessment to improve amenity.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application as there is not residential component.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development,	<p>(i) Environmental Impact</p> <p>The environmental impacts of the proposed development on the</p>

Section 4.15 Matters for Consideration	Comments
including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. Nominal hours are included (by conditions) to provide operating framework for the building (e.g business activity, occupancy of land use) consistent with MDCP.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	<p>The site is considered suitable for the proposed development. having considered the applicable planning controls in context with the urban surroundings, amendment made and referral considerations, including public considerations. Conditions are recommended to address relevant matters as appropriate.</p> <p>The new building and basement will be constructed across 2 Lots and therefore site consolidation should be implemented for the orderly development of the land. This is addressed by condition (prior to occupation).</p>
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	<p>No matters have arisen in this assessment that would justify the refusal of the application in the public interest. Detailed consideration of submissions are made within this report or summarised and addressed as appropriate within relevant DCP/LEP section / conditions. Submissions of objection and support were received by Council. All submissions have been read as part of the assessment.</p> <p>The proposal was Advertised and notified as "Nominated Integrated" development pursuant to the <i>Water Management Act 2000</i>, for a minimum of 28 days. WaterNSW has provided GTA's to address nominated integrated matters as a public authority.</p>

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 13/03/2023 to 18/04/2023 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 19 submission/s from:

Name:	Address:
Mrs Rosemary Barbara Dawson	633 / 25 Wentworth Street MANLY NSW 2095
Mr Brian Gregory Fitzgerald	440 / 25 Wentworth Street MANLY NSW 2095
Mrs Elizabeth Kathleen Young	538 / 25 Wentworth Street MANLY NSW 2095
Mr Gerard Joseph McMahon	831 / 25 Wentworth Street MANLY NSW 2095
Mr James Edward Morell Lloyd Mrs Susan Joy Lloyd	733 / 25 Wentworth Street MANLY NSW 2095
Kn Planning Pty Limited	Po Box 3372 WAREEMBA NSW 2046
Mr Wayne Edward Dearing	PO Box 1232 MANLY NSW 1655
Strata Partners Pty Ltd	PO Box 3046 WILLOUGHBY NORTH NSW 2068
Mr James Martin Carter	535 / 25 Wentworth Street MANLY NSW 2095
Mrs Belinda Kay Eady	69 Bungaloe Avenue BALGOWLAH NSW 2093
Christian D'offay	25 Wentworth Street MANLY NSW 2095
Mrs Tanja Gallate	3723 West Michael Dr, Unit 4 TETON VILLAGE WYOMING NSW 83025
Mr Efstathios George Gallate	631/11-27 Wentworth Street MANLY NSW 2095
Mr Graeme Leslie Henson	231 / 25 Wentworth Street MANLY NSW 2095
Mrs Penelope Blackburne Berents	635 / 25 Wentworth Street MANLY NSW 2095
Mrs Lisle Frances Fortescue	632 / 25 Wentworth Street MANLY NSW 2095
Mr John Cumming	533 / 25 Wentworth Street MANLY NSW 2095
Mr John Edward Coady	7 / 19 - 21 A Addison Road MANLY NSW 2095
Manly Business Chamber	52 Raglan Street MANLY NSW 2095

(Multiple submission on or on behalf of (i.e. Planning consultant) the same property are addressed collectively as a single submission issue. All submissions are read as part of the assessment considerations in context with relevant DCP / LEP controls.) Submissions of support are acknowledged by Council and noted as part of overall considerations in the public interest.

The following issues were raised in the submissions:

1. Views
2. Traffic and parking
3. Dilapidation risk
4. Building height

5. Laneway safety
6. Overdevelopment
7. Development precedent
8. Overshadowing of foreshore

The above issues are addressed as follows:

- *1. The submissions raised concerns that there is view loss and view sharing impacts across the site from properties adjacent that have views across the subject land toward Manly beach, ocean / coastal area and views toward Queenscliff.*

Comment:

This issue is addressed in detail under the heading *3.4.3 Maintenance of views* within this report. In summary, the application has been substantially amended across the upper storey level to address view considerations. This includes reshaping of the top storey which had implication's also for height variation's and floor arrangements in the lower storeys. Generally views are impacted directly in front, toward the Manly beach / surf line and toward a viewing angle of Queenscliff. Originally the view impact was very severe, particularly due to top storey arrangement within the proposal and a 'devastating' impact to Level 5 corner apartment behind the site. However, with amendments this has been moderated amendments with a merit design approach that however places a much greater height non-compliance within the central part of the site, in order to retain a diagonal view line. The design changes seek to accommodate competing view lines from adjacent residential apartments and gives weight to the diagonal view along Manly beach (toward Queenscliff) while also seeking to minimise view loss directly in front along the Manly foreshore area since the direct eastern view also has weight to units above level 5.



Image: Level 5 within No.25 Wentworth Street diagonal view corridor toward Queenscliff retained by shifting FSR forward (increasing non-compliance within 10m height plane) and redesigning building elements including light well, rooftop plant, front terrace, rear roof treatment and minimising additional impact on Units above. Comprehensive view analysis photomontages and supporting analysis has been provided by the applicant to demonstrate view considerations.

- *2. The submissions raised concerns that parking is inadequate for the development (floor space capacity) and the proposal will also impact local traffic congestion, particularly in Rialto Lane.*

Comment:

This issue is addressed in detail by Council's Traffic Engineer under the heading "Internal referrals" within this report. In summary, the proposal has been provided with a detailed traffic and parking report and being within the Manly CBD area relies partly of the available access to public transport, pedestrian / bicycle access, local public parking and basement parking / loading. Basement parking has been amended during the assessment period and Council's Traffic Engineer supports the proposal, subject to conditions.

- *3. The submissions raised concerns that there is a high dilapidation risk for construction, given the boundary to boundary construction and excavation work as well as completed demolition process required.*

Comment:

This issue is addressed by conditions and is routinely managed during the preparation site works stage (demolition) and throughout the construction phase. This requires dilapidation surveys of surrounding properties and appropriate demolition / construction safeguards to be implemented as well as compliance with Australian Standards / OHS and relevant, industry work methods (as standard a standard process) and use of a detailed construction / demolition management plan. The applicant has provided general outline of these matters and conditions are recommended to ensure compliance during works.

- *4. The submissions raised concerns that the building exceeds the maximum building height at both the front and rear sections defined by the MLEP 2013.*

Comment:

This issue is addressed in detail pursuant to "Clause 4.6" of the Manly LEP 2013 within this report. In summary, the proposed upper level has been revised in order to accommodate views. However this has increased the non-compliance within the 10m height plane that covers the front part of the site. Building-out the entire rear 12m envelope at the rear would devastate the view corridor across the site. Overall the non-compliance maintains consistency with the objectives of the E1 Local Centre zone and does not unreasonably impact other considerations of overshadowing, privacy, setbacks, streetscape and views.

- *5. The submissions raised concerns that the proposal will reduce safety within Rialto Lane, including potential conflict with delivery trucks, pedestrians.*

Comment:

This issue is addressed by conditions including requirements for a detailed *demolition and construction management plan*. Council's Traffic Engineer has addressed this issue under the heading "internal referrals within this report. This issue does not warrant refusal of the application.

- *6. The submissions raised concerns that the proposal is an overdevelopment of the site which will impact surrounding residential amenity.*

Comment:

The site breaches both the 10m and 12m building height envelopes that affect the, site but does not exceed the permitted FSR. The proposed building includes basement areas for parking, commercial / retail use, end of trip (EOT) facilities and a pedestrian link to Rialto Lane.

Height considerations have also sought to accommodate preferred commercial floor to ceiling heights (similar to the ADG) but no residential use is proposed. The proposal is consistent with the E1 Zone objectives and conditions are recommended to address associated amenity concerns that have not been fully detailed (such as treatment of rear windows, signage and the like). In summary, this issue does not warrant refusal of the application.

- 7. *The submissions raised concerns that adjacent development at No.31 to No.33 South Steyne created an undesirable precedent of impacts on adjacent land, including view loss.*

Comment:

The pattern of surrounding development has been considered as part of the overall development assessment. Conditions are included to ensure heights are not increased during construction, as may have been varied on adjacent land by modification. View loss considerations have been addressed in detail within this report under the heading "3.4.3 Maintenance of views". Subject to conditions this issue does not warrant refusal of the application.

- 8. The submissions raised concern that the proposal will increase overshadowing of the foreshore reserve and affect wind patterns close to the building.

Comment:

This issue is addressed within this report under the heading 3.4.1 'Sunlight access and overshadowing'. In summary, the shadow diagrams demonstrate that the proposal will not create unreasonable additional overshadowing to the beachfront reserve area. Consideration of wind effects near the building (such as along Rialto Lane) are not evident due to the similarity of the built form of the adjacent buildings along South Steyne. Therefore, the building does not "funnel" ocean breezes into the laneway area accessed from Wentworth Street. This issue does not warrant refusal of the application.

REFERRALS

Internal Referral Body	Comments
Design and Sustainability Advisory Panel	<p>PANEL CONCLUSION</p> <p><i>"The Panel supports the proposal in general but considers further refinements are needed.</i></p> <p><i>In particular:</i></p> <ul style="list-style-type: none"> <i>• Investigate recessing of glazing and the introduction of some solid elements to the eastern façade to better relate to adjoining and nearby buildings</i> <i>• Increase the amount of natural light entering the through site link and the extent of the double height volume</i> <i>• The applicant is strongly encouraged to investigate ways of minimising CO2-e emissions in operation"</i> <p><u>Planning Assessment Comment:</u></p> <p>The proposal has been amended during the assessment process to accommodate DSAP comments, however due to view considerations some recommendations are not included. Conditions are used to address residual issues with the revisions made to address streetscape, reflectivity and townscape considerations.</p>

Internal Referral Body	Comments
	<p>Strategic context, urban context: surrounding area character <i>The site achieves 0.5:1 bonus by virtue of its commercial use. This additional area is difficult to achieve within the designated height controls. As previously noted, the Panel believes that the building would be a good urban fit, and appropriate to its location in a heritage conservation area. The Panel did comment specifically on the amount of glazing:</i></p> <p><i>The proposal is within the foreshore scenic protection area and Heritage Conservation Area of Manly although not itself of heritage significance. In accordance with Manly LEP 2013 cl 5.10 (4) the consent authority must consider the impact of the proposed development on the heritage significance of the item or area concerned.</i></p> <p><i>The subject site is on the very edge of the HCA. The proposal for a completely glazed eastern façade is in stark contrast to the adjoining buildings although having architectural merit.</i></p> <p><i>The Panel was of the view that recessing the glass to provide some articulation to the façade in addition to that provided by the curved glass sections could be desirable, as would the introduction of some solid sections or masonry blades to relate to the adjoining buildings and most buildings in the HCA.</i></p> <p><u>Recommendation:</u></p> <ul style="list-style-type: none"> <i>Investigate recessing of glazing and the introduction of some solid elements to the eastern façade to better relate to adjoining and nearby buildings.</i> <i>Has not been pursued, no alternative treatments were presented. It remains the view of the Panel that alternative façade treatments should be investigated. The application is accompanied by a design statement that sets out the overall approach and includes the following:</i> <i>The proposal is a contemporary response to its context and use. The fine grain scale of the openings reflects rather than imitates the scale of the street wall, creating a contemporary office environment with generous views and terraces.</i> <p>The Panel remains of the view that alternatives should be investigated for the following reasons:</p> <ul style="list-style-type: none"> <i>A contemporary response does not necessarily rely on a fully glazed façade</i> <i>The size of the openings and glazing can in no way be considered 'fine grain' when seen in the context of surrounding buildings</i> <p><u>Recommendation</u></p>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> 1. Investigate recessing of glazing and the introduction of some solid elements to the eastern façade to better relate to adjoining and nearby buildings. <p><u>Planning Assessment Comment:</u> These recommendations above have been substantially achieved by revised facades and materiality changes, including fenestration. Council's Heritage Officer supports the front elevation appearance, however conditions are recommended to address other considerations of structures overhanging Council's footpath (Council land/road reserve). Conditions are also recommended to address Rialto Lane appearance as part of the MDCP objectives for Townscape in the HCA.</p> <p>Scale, built form and articulation <i>The Panel is generally supportive of the scale and built form of the proposal.</i> <i>The Panel notes that the permissible heights and allowable FSR including bonuses for commercial use are not aligned; it is simply not possible to achieve the FSR within the height limits. Additionally, the Panel is supportive of generous floor to floor heights. The 0.5m increase in height from the Pre-DA scheme is noted but is considered to have insignificant additional impact.</i></p> <p><i>It is not clear how much natural light would actually penetrate into the through site link. The applicant is encouraged to maximise the amount of glazing between the circular court and the through site link. This would appear possible on level 01 between grids 4 and 5 with possible extension right through to the proposed 'void to TSL' at the eastern end with minimal loss of floor area.</i></p> <p><i>Some changes have been made but how the basement would function for food and beverage or as a gym is not clear given that these spaces would need to be accessible.</i></p> <p><i>The Panel appreciates the attempt to introduce natural light and ventilation to the basement through the introduction of a 'skylight' but considers this insignificant and consequently could be deleted. This leaves the question of the use of the basement level.</i></p> <p><u>Recommendations</u></p> <ul style="list-style-type: none"> 2. The Panel is supportive of the habitable awning and the clear demarcation of the entry to the through site link. Consideration could be given to aligning the southern edge with the subtended extension of the boundary line. 3. Maximise the natural light and extent of the double height portion of the through site link 4. Consider conditions accompanying the approval to restrict the uses of the basement to not include commercial (office) working space

Internal Referral Body	Comments
	<p><u>Planning Assessment Comment:</u> These recommendations have been addressed in that the front awning is not longer trafficable but narrow terrace sections are integrated behind (within the site boundary). Conditions are recommended to reduce the width of the landscaping overhanging Council footpath and include a regular forward edge to the awning to reduce the discontinuity in appearance with No.36-38 South Steyne as both properties are within the HCA. The visual definition of the 'walk-through' link is acceptable for the awning/ facade, including natural light voids. A condition is included to limit the basement floor space as commercial office. Restricting use of the basement from permissible uses is contrary to planning provisions that otherwise make those uses permissible with development consent.</p> <p>Access, vehicular movement and car parking <i>No further comment, the Panel remains supportive of the reduced car parking numbers given the location, its accessibility and constraints imposed by the geometry and dimensions of the site.</i></p> <p><i>The Panel is very supportive of the bicycle parking and commitment to end of trip facilities.</i></p> <p><i>The Panel also commented on the arrangement of services in relation to Rialto Lane. The Panel makes no further comment as any technical issues will be resolved in discussion with Council.</i></p> <p>Landscape <i>Generally, the landscape treatments appear suitable in relation to their conditions and location and the appropriate soil depths appear to be provided. The rooftop is a simple refined space which will provide flexibility of use and a quality communal space.</i></p> <p><i>Pool accessibility and fencing is unclear.</i></p> <p><i>The awning terrace is considered a positive for activation of the public domain.</i></p> <p><u>Recommendations</u></p> <ul style="list-style-type: none"> • 5. Consider the detailed integration of the pool fencing and provision of universal accessibility to the pool so it is beautifully designed in. <p><u>Planning Assessment Comment:</u> The pool has been deleted and a landscaped terrace only for Level 3 with planter box edge.</p> <p>Amenity Issues related to exhausts have been addressed.</p>

Internal Referral Body	Comments
	<p><u>Planning Assessment Comment</u> Exhausts have been revised and roof plant re-positioned as part of view considerations.</p> <p>Façade treatment/Aesthetics Refer to previous comments about contextual fit (recommendation 1)</p> <p><u>Planning Assessment Comment</u> Addressed above.</p> <p>Sustainability <i>The proposal complies with the NCC.section J.</i></p> <p><i>There has been no commitment to, or investigation of whether it might be possible to achieve Net Zero in operation. It would appear that the 15KW that is included in the proposal could be doubled given the amount of roof area available This would reduce the annual CO2-e from the proposed 119,000kg CO2-e emissions by approximately 22,772 kg (refer to p 28of Energy Efficiency report).</i></p> <p><i>This is still a long way from carbon neutrality, however it is not clear what other strategies or approaches have been explored to further reduce CO2-e emissions beyond compliance with the NCC.</i></p> <p><i>We are living in a climate emergency – all new buildings should be designed to be as naturally comfortable as possible without heating and cooling (passive design) and should not rely on energy from fossil fuels. This should be possible in a coastal location like Manly that has a very different climate from Observatory Hill that is the weather station used in the Section J assessment.</i></p> <p><i>The impacts of climate change and the changes to energy supply and security are out-pacing policy and regulation. The role of the Panel is to advise on ‘design (quality) and sustainability’ and is not confined to existing legislation or the approaches of the past. Accordingly, the Panel believes it is appropriate and necessary for it to provide ‘forward-thinking advice’ to both proponents and to council staff involved in the assessment of development. With the current massive spikes in energy from uncertain times, the advisability to build the comfort and energy resilience of projects is even more obvious.</i></p> <p><i>With the regulatory environment changing in the near future – for efficiency, electrification and mandatory disclosure – these investments at this time will be worthwhile both for future residents and the developers’ reputation, market position and marketability of the building.</i></p> <p><u>Recommendations</u></p> <ul style="list-style-type: none"> • 6. Double the amount of PV to 30kW

Internal Referral Body	Comments
	<ul style="list-style-type: none"> • 7. Increase the number of bi-directional EV charging points Car spaces 5, 7, 9, 10 and 11 would also be suitable for points • 8. All services should be electric – gas for cooking, hot water and heating should be avoided. • Heat pump systems for electric hot water should be considered • The storage of hot water can be considered a de-facto battery if heated by PVs during the day • Note the risk of gas reticulation becoming a 'stranded asset' and the possibility of additional costs to remove gas and rewire the building • 9. Consider site battery storage has benefits for the grid and may be a highly desirable back-up during the transition to a de-carbonised grid <p><u>Planning Assessment Comment:</u> The use of PV on the upper roof will increase view impacts on overlooking apartments. The applicant has removed "clutter" from the roof design and included low roof planting at the rear and neutral roof colour (subject to conditions). EV charging is now included in the basement carpark. Heat pump and battery storage are subject to construction certificate specification stage. Space is available in basement service rooms for installation. Food and beverage cooking facilities are subject to fitout / future lease occupancy specification.</p>
Building Assessment - Fire and Disability upgrades	<p>Supported with conditions.</p> <p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at <i>Construction Certificate Stage</i>.</p>
Environmental Health (Acid Sulfate)	<p>Supported with conditions.</p> <p><u>General Comments</u> The site is designated <i>Class 4</i> Acid sulfate. The applicant has submitted an acid Sulfate report. Bore holes to proposed excavation depths have not found any acid sulfate soils. Therefore, Environmental Health supports the proposal subject to conditions.</p>
Environmental Health (Industrial)	<p>Supported with conditions.</p> <p><u>General Comments</u> The acoustic review states that the future noise implications from the development and to the currently undesignated occupants will need</p>

Internal Referral Body	Comments
	<p>to be assessed the time of tenancy. Likewise, air conditioning and ventilation motors, pool pump equipment and the like will need to be assessed at the time of purchase and installation taking into consideration requirements of the acoustic report.</p> <p>On this basis potential noise and environmental impacts from and too the development can be reasonably expected to be resolved prior to occupation of the development and therefore Environmental Health supports the application</p> <p>Excavation and Construction noise will have a significant impact on adjoining businesses and particularly residences during daytime occupation.</p> <p>The main area to be impacted with be the area adjoining Rialto Lane.</p> <p>Although no realistic alternatives are possible and it is noted that a construction management plan has been provided, whereby trucks for excavation will be required to wait offsite until needed.</p> <p>It is important that this system be maintained for concrete pours, concrete structural components as well , concrete delivery vehicles will need to idle during wait times.</p> <p>Residents in Rialto Lane have been impacted previously by vehicles idling in the laneway with exhaust stack , exhaust fumes and noise near balcony and window levels.</p> <p>It is critical that affected neighboring occupiers are advised well in advance of noisy activity periods as some may wish to relocate or business close down during this times.</p> <p>On this basis potential noise and environmental impacts from and too the development can be reasonably expected to be resolved prior to occupation of the development and therefore Environmental Health supports the application.</p> <p>Environmental Health recommend conditions be applied for certification of the pool design and registration prior to OC.</p> <p><u>Planning Comment</u> The roof terrace swimming pool has been deleted as part of view loss considerations that required reshaping Level 3. (Associated pool condition are deleted)</p>
Landscape Officer	<p>Supported with conditions.</p> <p>The application seeks consent for demolition and construction of a commercial building. The plans indicate that no significant landscape features are affected by the proposed works. Landscape Plans prepared by Wyer & Co. are noted. The plans indicate planting suitable for the site and building.</p>

Internal Referral Body	Comments
	No objections are raised with regard to landscape issues subject to conditions.
NECC (Development Engineering)	<p>Supported with Conditions</p> <p><u>Original Development Engineering Referral Comments</u> The proposal is for a commercial development including basement level carpark. The submitted stormwater plan proposes to discharge to an existing stormwater pit in Rialto Lane. However Council's asset data do not have any information on the stormwater pit in Rialto Lane. According to Council records, the closest pit is located at the corner of Wentworth Street and Rialto Lane.</p> <p>The Applicant shall provide pipe survey, by a service locating contractor and registered surveyor, to demonstrate that the pit in Rialto Lane has a pipe connection to the Council system at the corner of Wentworth Street. The survey shall include the location, size and depth of the pipe in Rialto Lane.</p> <p>Alternatively a new connection shall be proposed from the site to the Council system at the corner of Wentworth Street.</p> <p>The proposed application cannot be supported by Development Engineering due to lack of information to address:</p> <ul style="list-style-type: none"> • <i>Stormwater drainage for the development in accordance with Council's Water Management for Development Policy.</i> <p><u>Development Engineering Review 29/5/2023</u> The Applicant has provide pipe survey indicating an existing pipe connection from the pit in Rialto Lane to the Council pit at the corner of Wentworth Street. No objections to approval subjection to conditions as recommended.</p>
NECC (Flooding)	<p>Supported with conditions.</p> <p>The development proposes to build four levels of above ground commercial space, a below ground commercial level and a basement carpark.</p> <p>Subject to conditions the development is complying to Council's development [flood] controls.</p>
NECC (Water Management)	<p>Supported with conditions.</p> <p>The application seeks consent for demolition and construction of a commercial building. No objections are raised with regard to water</p>

Internal Referral Body	Comments		
	<p>management issues subject to conditions.</p> <p>The geotechnical documentation is lacking details on the interaction of the project with the groundwater table. Additional geotechnical investigation are required and should document the need to get a licence or approval for construction dewatering from WaterNSW.</p> <p>Refer to Minimum requirements for building site groundwater investigations and reporting Information for developers and consultants, October 2022, from NSW Department of Planning and Environment.</p> <p>A council dewatering permit prior the start of the construction will be required.</p>		
Parks, reserves, beaches, foreshore	<p>Supported without conditions.</p> <p>The proposed development is opposite public land managed by Council. The proposed development in form and height is similar to adjoining properties, without providing comment on the architectural merit of the design. As viewed from the North Steyne promenade and beachfront, the development is not detrimental to the established landscape scenic character of North Steyne promenade and beachfront.</p>		
Property Management and Commercial	<p>Supported without conditions.</p> <p>Property has no concerns with the proposal provided the awning over the footpath is not a trafficable space.</p>		
Road Reserve	<p>Supported with conditions.</p> <p><u>Comment on amended plans.</u> Private use of the public road reserve airspace for balcony is not supported.</p> <p><u>Previous comments 22/3/23</u> If trafficable awning over Council's public road reserve is considered and supported by the Property Team and Development Assessment, the Property Team must provide conditions to ensure the commercial terms and return to Council for the use of its air space is satisfactorily resolved. It is understood this would require a Stratum Subdivision of the airspace to enable such a lease to be granted for more than 5 years.</p> <p><u>Planning comment:</u> The proposal has been amended with no trafficable are on the balcony overhanging the footpath area.</p>		
Strategic and Place Planning (Heritage Officer)	<p>Supported with conditions.</p> <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
	<p>The proposal has been referred to Heritage as the subject property is located within the Town Centre Conservation Area and adjoins a heritage item, being Item I106 - Group of commercial buildings - All numbers, The Corso, listed in Schedule 5 of Manly Local Environmental Plan 2013. It is also within the vicinity of a number of heritage items, including:</p> <p>Item I168 - Ocean foreshores - Manly municipal area, boundary adjacent to the ocean</p> <p>Item I174 - Beach Reserve—Merrett Park North Steyne and South Steyne</p> <p>Details of heritage items affected</p> <p>Details of the conservation area and the items in the vicinity, as contained within the Heritage Inventory are:</p> <p>C2- Manly Town Centre Conservation Area <u>Statement of significance:</u> The Manly Town Centre Conservation Area (TCCA) is of local heritage significance as a reflection of the early development of Manly as a peripheral harbor and beachside village in the fledgling colony of New South Wales. This significance is enhanced by its role as a day-trip and holiday destination during those early years, continuing up to the present time, and its association with H G Smith, the original designer and developer of the TCCA as it is today. The physical elements of the TCCA reflect this early development and its continued use for recreational purposes, most notably the intact promenade quality of The Corso and its turn of the century streetscape, as well as key built elements such as hotels, and remaining original commercial and small scale residential buildings.</p> <p><u>Physical description:</u> The Manly TCCA has a mixed character and comprises three key zones. The triangular zone north-west of The Corso, bound by Belgrave Street and Sydney Road, including Market Square, generally comprises small scale commercial buildings.</p> <p>The second zone comprises The Corso, which is the iconic focus for the Manly Town Centre Conservation Area. Extending from Manly Wharf north-east to Ocean Beach, The Corso is a grand promenade, now primarily pedestrian, lined with predominantly low rise commercial buildings. The majority date to the late Nineteenth Century through to the 1930s, and are generally on narrow allotments.</p> <p>The third zone, which lies south east of The Corso along Darley Road is predominantly mixed development progressing south eastward into residential, and is quite diverse with regard to building form.</p> <p>Significant vistas adjacent to the boundary of the Manly TCCA</p>

Internal Referral Body	Comments		
	<p>include:</p> <ul style="list-style-type: none">• Vistas north east and south west along Victoria Parade from Darley Road. Despite various unsympathetic infill developments along Victoria Parade, the wide boulevard style street width, the street plantings and medium scale residential buildings reminiscent of historical use primarily as holiday accommodation, all add to the significance of the precinct.• Vistas north and south along North and South Steyne from the north eastern end of The Corso;• Vista south along Belgrave Street towards Manly Wharf;• Vista north along Belgrave Street from Manly Wharf;• Vista north west along West Esplanade. <p>Associated contributory cultural landscape elements adjoining the boundary of the Manly TCCA include:</p> <ul style="list-style-type: none">• Beach Reserve, including Merrett Park, and The Steyne (North and South)• The water front parks along East and West Esplanade• Gilbert Park• Ivanhoe Park <p>This listing also includes any significant interior elements (including original room layout, decorative elements, finishes, fittings and fixtures) of all buildings within the Manly TCCA.</p> <p>Item I106 - Group of commercial buildings</p> <p><u>Statement of significance:</u></p> <p>The streetscape and its special qualities are of major significance to the state. The Corso has important historical links to the development of tourism and recreation which is still present and likely to continue. It's role as the pedestrian link between harbour and ocean, city and sea - for the tourist, is fundamental to Manly's status as a resort.</p> <p><u>Physical description:</u></p> <p>The Corso is the NE-SW link between Manly Beach and Manly Cove. It acts as a low scale horizontal corridor which steps down from the harbour to the ocean. It has a cohesive character resulting from generally low scale of development on its principle streets, Construction to the property boundaries, slightly higher and distinctive corner buildings and a good level of pedestrian protection and amenity generated by footpath awnings and through-block arcades has produced strongly defined and comfortable urban spaces.</p>		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	No	

Internal Referral Body	Comments		
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	
Consideration of Application			
<p>The proposal seeks consent for the demolition of the existing structures and the construction of a 3(front) and 4(rear) storey commercial development with two level basement parking on the subject site. The proposal also includes a lap pool on the roof terrace.</p> <p>The subject site is located within the conservation area and is in the vicinity of a number of heritage items. There are no objections to the bulk and scale of the proposed building, however Heritage raised concerns in relation with the front façade treatment. It was suggested in the PLM advice, that providing some masonry around the sides of the windows would allow a concession to the older fenestration of the facade. The rear elevation is not of that concern but the street façade is considered to be losing the fine texture that the older buildings have along the street, in terms of the proportions of the masonry and glazing on the front facade. It is noted that the proposal with this application has not provided any changes or improvement regarding the Heritage concern in relation with the fenestration and the facade treatment to South Steyne.</p> <p>Revised Comments - 22 February 2023</p> <p>Amended documents received on 02 February 2023, with revision DA-B, have resolved the main issue that Heritage had with the proposal. The amended plans provide a higher level of solidity and reflects the form and rhythm of the older building's façade treatment. It is considered that the proposed fenestration of the front façade has been improved; now responds to the massing of the older building and therefore better relates to the heritage context.</p> <p>The proposed link is supported by Heritage, as it connects the beach front to Rialto Lane that complements its historic use. However, a preferred approach would have been; to allow an appropriate activation (active shop fronts without the entry to the basement parking) on the ground level and to add some solidity to the upper levels of the Rialto Lane frontage.</p> <p>Although, the use of concrete and glass facade treatment does not reflect the historic character of the conservation area, it is considered to reflect the seaside context and the proposed neutral colour scheme is considered complementary to the context.</p>			

Internal Referral Body	Comments		
	<p>Given the proposed building is clearly contemporary, but responds to the scale and form of the older buildings and adds sympathetically to the streetscape and the grain of the area, the impact of the proposal, upon the significance of the HCA and the heritage items in the vicinity, is considered acceptable.</p> <p>Therefore, no objections are raised on heritage grounds and no conditions required.</p> <p><u>Consider against the provisions of CL5.10 of Manly LEP 2013.</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes</p> <table><tr><th>Further Comments</th></tr><tr><td>Nil</td></tr></table>	Further Comments	Nil
Further Comments			
Nil			
Traffic Engineer	<p>Supported with conditions.</p> <p><u>Additional comments relating to traffic and parking addendum and further revised plans received 22/3/23</u></p> <p>The additional information has addressed the following concerns raised in the previous referral comments:</p> <ol style="list-style-type: none">1. A compliant pedestrian sight line triangle is available at the point where the pedestrian through site link meets Rialto Lane2. A traffic signal system has been included to manage traffic movements in and out of the carpark. The signal will display as red when activated by a vehicle exiting the carpark requiring a vehicle seeking to enter to wait and/or circulate until the ramp is clear. As the creation of an internal waiting bay, as requested, would result in loss of parking and as the number of movements to and from the site will be low, the proposed arrangement is acceptable.3. There is sufficient overhead clearance over the loading bay to allow for rear loading of the intended waste collection vehicle4. There is adequate clearance over parking space No.8 to meet the requirements of AS/NZS2890.1 clause 5.3.1 <p>The remaining outstanding traffic issue relates to the shortfall in parking. The DCP requires 40 parking spaces to support the proposed uses on the site with the developer proposing 13 parking spaces including 2 staff car pool spaces and 2 car stackers. A loading/servicing bay is also proposed. The parking provisions are therefore well below DCP requirements however the applicant has presented the reduced level of parking in a positive light arguing that it encourages workers to travel via sustainable transport and reduces</p>		

Internal Referral Body	Comments
	<p>car trip rates in the pedestrian dominated environment in Rialto Lane. These arguments are accepted noting that removing the basement commercial is likely to result in excessively steep ramps, additional but tighter parking arrangements and loss of the below ground loading bay. Given the above the 13 parking spaces are accepted in this instance</p> <p>The development is therefore supported of traffic grounds subject to conditions</p> <p>Amended comments relating to amended report and plans – 07/03/2023</p> <p>Proposal description: Demolition and construction of a commercial building</p> <p>The applicant has made some amendments and provided further information in relation to the concerns raised in Traffic Referral Response on 11 November 2022.</p> <p>Some of the amendments/further information include:</p> <ul style="list-style-type: none"> • Adjustments to the Restaurant Serviced floor areas and commercial floor areas. • A total of 13 parking spaces, including 2 tandem stackers, 2 car share spaces plus a separate loading bay (for loading/delivery vehicles up to the size of a 6.4m long Waste Wise Mini Garbage Truck) has been provided for the development. • It is proposed to allocate the car parking spaces to the employees and staff of the commercial offices and restaurants. The proposed parking arrangements would therefore minimise the level of traffic activity in Rialto Lane by restricting traffic flows to the less intensive employee and staff uses only, without the more intensive levels of traffic activity which would be generated by customer uses of those parking spaces. The constrained nature of the carpark and the presence of car stackers also means the layout of the carpark is more suitable for those who might use the facility on a regular basis. • The applicant's traffic consultant advises that Council's traffic engineer has "indicated that car share spaces would be considered equivalent to 3 parking spaces each". This is not the case. The outcome of the discussion was that Council did not support the use of car share in this location as there was already a significant number of car share vehicles operating within

Internal Referral Body	Comments
	<p>the Manly Town Centre. If the applicant wanted to allocate the spaces for employee pool car use, this was not opposed however no reduction in parking requirements would apply as a result of such use. While consideration to approval of a lower level of parking than DCP rates would be given, in view of the site constraints, it was not envisaged that anything less than a 50% reduction in the required parking would be supportable.</p> <ul style="list-style-type: none"> The proposed new mixed-use building is expected to be serviced by a variety of light commercial vehicles such as the Hyundai iLoad or similar white vans, and small trucks up to and including the 6.4m long Waste Wise Mini Garbage Truck which requires an overhead clearance of 2.08m. <p>The Traffic team has reviewed the following documents:</p> <ul style="list-style-type: none"> Plans (Master Set), Amended – issue for DA, designed by DURBACH BLOCK JAGGERS, dated 10/01/2023, Amended Traffic and Parking Assessment report prepared by Varga Traffic Planning dated 23 January 2023, Addendum Statement of Environmental Effects prepared by Boston Blyth Fleming Town Planners dated 27th January 2023, and Traffic Referral Responses to DA2022/1164 dated 11/11/2022. <p>There were a number of traffic concerns raised in the Traffic referral comments dated 11 November 2022 that have not been adequately addressed in the Amended Traffic and Parking Assessment Report.</p> <p><u>Parking Requirements and Design</u></p> <ul style="list-style-type: none"> The parking requirements for the development are 39.6 parking spaces (rounded up to 40). The development proposes a total of 13 car parking spaces including two (2) carshare parking spaces, and two (2) tandem stackers. There is therefore a shortfall of 27 parking spaces. As outlined in the Traffic Referral comments dated 11/11/2022, a 50% reduction in parking requirements is considered the maximum that could be supported and the use of car share spaces at this site is not supported. The allocation of spaces for staff car pool use (as opposed to car share) is not opposed but this does not reduce the development's parking requirements. In the original Traffic Referral comments, it was suggested that the removal of the basement commercial floor space could potentially free up space below ground for

Internal Referral Body	Comments
	<p>additional parking/loading areas as well as reducing parking requirements associated with the development.</p> <ul style="list-style-type: none"> • Swept path plots for access to and from the development have been provided for the largest vehicle (6.4m long Waste truck) entering/exiting the site from Rialto Lane and then entering/exiting the carpark ramp. It is noted that that this turning path is based upon entry via eastbound travel on Rialto Lane (which is appropriate) with sufficient space to pass a parked truck within the Loading Bay on the north side of Rialto Lane. • Given that the ramp and the carpark circulation roadway are single-width, and as the carpark appears to have no where for opposing vehicles to pass, vehicles may encounter on another on the access ramp or in the carpark and be unable to pass. A waiting bay inside the carpark and a signal system to manage ingress/egress movements should be included in the amended plans. The above will ensure that passing opportunities for vehicles in opposing directions will be available and shall be demonstrated by swept path plots for a B99 passing a B85 vehicle. • A vertical clearance assessment on the driveway ramps has been undertaken and demonstrates that the proposed waste truck can access the carpark with adequate clearance. • It is noted that stairs are proposed above car space number 8. For compliance with AS2890.1 section 5.3.1, the height between the floor and an overhead obstruction shall be a minimum of 2.2m. This should be confirmed for this space. <p><u>Loading/servicing</u></p> <ul style="list-style-type: none"> • The Traffic report attaches a letter from a waste service provider confirming that their rear-loading vehicle is 6.4m in length and 2.2m in height. A dimension diagram attached to that letter shows an overhead clearance of 2.08m. The traffic report also advises that it requires an overhead clearance of 2.08m. As noted in the original Traffic Referral comments, it is unclear if the rear loading of the vehicle requires an increased overhead clearance beyond the quoted 2.2m. Further information clarifying the clearance height required when bins are emptied into the waste vehicle is required. This must confirm that there is adequate overhead clearance (2.5m) above the loading bay to cater for rear loading. • Some information regarding future deliveries/loading arrangements, together with details of the delivery arrangements for the proposed development are required. This should include an analysis of future

Internal Referral Body	Comments
	<p>delivery frequency and the suitability of the proposed loading bay to cater for such deliveries including overhead clearance requirements. It is required to demonstrate that the development can operate effectively without any reliance on an on-street loading bay.</p> <p><u>Pedestrian through Site Link</u></p> <ul style="list-style-type: none"> As per the Traffic Referral comments, for the pedestrian through site link, measures to enhance the Shared Zone and cater for pedestrian safety at the junction with Rialto Lane should be considered. The corner splay and the sight line triangle should be plotted and dimensioned on the plans. <p>The amended plans and traffic report in their current form remain unacceptable given the concerns relating to the adequacy of the off-street parking and internal circulation arrangements. There are also areas where additional information is required to confirm the adequacy of the proposed arrangements.</p> <p>The proposal therefore remains unsupported.</p> <p>----</p> <p>Comments - 11/11/2022</p> <p>Proposal description: Demolition of existing structures and construction of a multistorey commercial building at 34 - 35 South Steyne, Manly, including 4 levels of above-ground commercial, a below-ground commercial and a basement carpark.</p> <p>The traffic team has reviewed the following documents:</p> <ul style="list-style-type: none"> Plans (Master Set) – issue for DA, designed by DURBACH BLOCK JAGGERS, dated 22/06/2022, Traffic and Parking Assessment report prepared by Varga Traffic Planning dated 30 June 2022, Statement of Environmental Effects prepared by Boston Blyth Fleming Town

Internal Referral Body	Comments
	<p>Planners dated July 2022, and</p> <ul style="list-style-type: none"> Pre-Lodgement Advice (PLM2022/0084) dated 09 June 2022. <p>It is noted that:</p> <ul style="list-style-type: none"> Vehicular access to the off-street parking facilities is provided via a new combined entry/exit driveway off Rialto Lane. Off-street parking for the proposed development is provided for a total of 12 cars, including 2 car share spaces and 5 bicycles in a basement parking area beneath the building. Loading and servicing will be undertaken by commercial vehicles up to and including the 6.4m long Waste Wise Mini Garbage Truck with an overhead clearance of 2.08m. The applicant's traffic consultant advises that Council's traffic engineer has 'indicated that a reduction of 50% (in DCP parking rates) would be considered acceptable and that car share spaces would be considered equivalent to 5 parking spaces each'. This is not the case. The outcome of the discussion was that Council would give consideration to a lower parking rate given the site constraints however anything less than a 50% reduction would be unacceptable. It was acknowledged that Council has accepted a privately operated car share space in lieu of up to 5 car car spaces when assessing some other development application and it was suggested that the use of one or two car share spaces may be a means of reaching that 50% figure. It was NOT suggested that car share spaces could be used to provide even less than 50% of the required parking under the DCP. <p>There were a number of traffic concerns raised in the Prelodgement meeting (PLM) traffic referral comments dated 9 June 2022 that have not been adequately addressed in the Traffic and Parking Assessment Report.</p> <p>Parking Requirements and Design</p>

Internal Referral Body	Comments
	<p>· The parking requirements for the development comprising 199.4m² GFA of Restaurant Serviced Area and 1,386.5m² GFA of commercial premises (a total of 1,585.9m² GFA) are 39.6 parking spaces (rounded up to 40). The development proposes a total of 12 car parking spaces including two (2) carshare parking spaces, and one (1) shared loading/waste/retail parking space. It is noted that the size of the waste collection vehicle that will service the development is only small and regular servicing will therefore be required. The loading/waste bay cannot be considered a parking space as it will be in regular use for waste collection and deliveries. The development therefore provides only 11 parking spaces and, accordingly, there is a shortfall of 29 parking spaces.</p> <p>· The use of car share parking on-site was suggested at the PLM meeting as a potential means to offset some of the development's parking requirements. The developer proposes two (2) car share parking spaces, and the developer wishes to consider these spaces the equivalent of five (5) parking spaces each. Upon further reflection, the use of car share spaces at this site is not supported. This part of Manly is well served by car share already as highlighted in the developers traffic report and while commercial tenants of the development are encouraged to sign up for individual or corporate membership of a car share organisation operating in Manly, the dedication of two spaces for car share use is now considered undesirable and unnecessary. The developer may elect to dedicate two of the spaces for pool car use which would make vehicles more accessible for workers in the building but this does not reduce the development's parking requirements.</p> <p>· While some relaxation of DCP requirements in this location could be considered to reduce traffic levels and to encourage greater use of sustainable transport modes, having regard to the proximity of the site to good public transport, shops and recreational uses and the high level of walking and cycling activity in the vicinity, a 50% reduction in parking requirements is considered the maximum that could be supported.</p>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> · Section 4.2.5.4 of Manly DCP gives some exceptions to parking rates/ requirements in Manly Town Centre (including commercial premises) where the constraints of the site preclude the provision of some or all of the required parking spaces and where the movement of vehicles to/from the site would cause unacceptable conflict with pedestrian movements. This is not the case at this site as it is not constrained in terms of its ability to provide parking. The removal of the basement commercial floor space would free up space below ground for additional parking/loading areas as well as reducing parking requirements associated with the development. · The development is not for alterations and additions to an existing building or change of use of an existing structure, and it is not unreasonable to expect that the developer should provide parking · As outlined at prelodgement stage, there is no longer any capacity to levy contributions for parking from the Manly Section 94 Contributions plan, therefore each DA must now be considered on its merits in terms of the adequacy of parking. · Any increased parking demand on-street as a result of parking shortfall for this development will exacerbate existing high levels of parking congestion in the Manly Town Centre. · The driveway at the property line is measured to be approximately 6.1 metres wide, reducing to about 4.4 meters wide inside the property on the ramp. No plots for access to and from the development have been provided. As also outlined in the PLM referral, a swept path plot must be provided for B99 vehicles entering/exiting the site from Rialto Lane and then entering/exiting the carpark ramp. Noting that this must be based upon entry via eastbound travel on Rialto Lane past a parked truck within the Loading Bay on the north side of Rialto Lane. Entry from the south is not permissible under existing travel flow arrangements in Rialto Lane. · The ramp and the carpark circulation roadway are single-width. There will therefore be no capacity for vehicles to pass on the ramp and through the circulation roadway. A waiting bay inside the carpark and a signal system to manage ingress/egress movements should be included in the amended plans. Passing opportunities for

Internal Referral Body	Comments
	<p>vehicles passing in opposing directions within the carpark are to be available and shall be demonstrated by swept path plots for a B99 passing a B85 vehicle.</p> <ul style="list-style-type: none"> · A vertical clearance test has been shown for the Waste Collection vehicle, which shows that this vehicle can negotiate the driveway. A vertical clearance assessment on the driveway ramps should be undertaken, using traffic engineering software such as Autotrack/Autoturn, for a B99 car entering and accessing the carpark to show any scraping and bottoming. <p>Loading/servicing</p> <ul style="list-style-type: none"> · Provision has been made for an off-street loading bay to cater for deliveries to the proposed commercial/ retail premises. The loading bay length is measured approx. 5.4m which is not sufficient length to accommodate a 6.4m SRV. The traffic report attaches a letter from a waste service provider confirming that their rear loading vehicle is 6.4m in length and 2.2m in height. The traffic report however advises that it requires an overhead clearance of 2.08m. The letter also advises that a dimension diagram is attached but this has not been provided to Council. There is a lack of clarity regarding the required dimensions for the waste service. In particular it is unclear if the rear loading of vehicle requires an increased overhead clearance beyond the quoted 2.2m. Further information clarifying the space requirements and in particular enclosing the dimension diagram is required to verify that the loading bay is appropriately sized and that the 2.5m overhead clearance above the loading bay is adequate. · As noted in the PLM referral, the shared use of a parking bay/loading bay is not supported given that access for loading/waste collection is not feasible if the parking bay is occupied and noting the frequent waste collection regime that will be required as a result of the limited capacity of the vehicle. The parking bay should be reallocated a Loading Bay. · It is reported in the traffic report that loading/servicing for the proposed development is

Internal Referral Body	Comments
	<p>expected to be undertaken by a variety of light commercial vehicles and small to medium-sized trucks up to and including the 6.4m long Waste Wise Mini Garbage Truck. Council requires clarification on the intended loading/unloading arrangements that will apply noting that the loading bay and overhead clearance is unsuitable for servicing by most small trucks and by no medium sized trucks. Some information regarding future deliveries/loading arrangements, together with details of the delivery arrangements for the proposed development are required. This should include an analysis of future delivery frequency and the suitability of the proposed loading bay to cater for such deliveries. It is required to demonstrate that the development can operate effectively without any reliance on an on-street loading bay. The loading bay should be plotted to conform with the dimensions of the largest vehicle anticipated to require access the site. Use of Loading Zones in Rialto Lane which are already overused is not appropriate</p> <ul style="list-style-type: none"> · As noted in the PLM comments, the bin store room is not located adjacent to the waste collection bay and requires waste collection staff to transport bins through the circulation area to reach the waste collection vehicle. This is unsafe and impractical. <p>Pedestrian through Site Link</p> <ul style="list-style-type: none"> · As per the PLM referral comment, for the pedestrian through site link: <ul style="list-style-type: none"> o measures to enhance the Shared Zone and cater for pedestrian safety at the junction with Rialto Lane should be considered eg. Contrasting paving, warning signage and markings. o For compliance with AS2890.1 clause 3.2.4 (b), the corner splay at the point where the pedestrian through sight link meets Rialto Lane should be 2.5m x 2.0m which will allow for visibility to/from pedestrians exiting the through site link onto Rialto Lane. The sight line triangle should be plotted and dimensioned on the plans

Internal Referral Body	Comments
	The plans and the traffic report in their current form are unacceptable due to the inadequacy of the provided information as outlined above.
Waste Officer	<p>Supported with conditions.</p> <p><u>Waste Management Assessment - Amended Plans (submitted 2/2/23)</u> Supported, subject to conditions</p> <p><u>Previous Waste Management Assessment Recommendation - Unacceptable.</u></p> <p>Specifically: No clear explanation is provided as to how the retail bins (restaurant) will be accessed by the waste collection vehicle. When the waste collection vehicle enters the building it parks in a service bay on basement level 2. The retail bins are stored in a room on basement level 1 to which there is no truck access. The proposal is for 4 x 1100 litre bins which will require 3 truck movements per week for emptying.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Nominated Integrated Development - WaterNSW - Water Management Act 2000, s90(2) - Water management works approval to construct and use a specified water supply/drainage/flood work at a specified location	The proposal was referred to WaterNSW for advice and General Terms of Approval (GTA's) regarding dewatering processes due to excavation below the water table. <i>WaterNSW</i> provided its GTA's which are included as part of the recommended (External Authority) conditions of consent. GTA's were issued on 3/10/2023 IDAS1150821 as " <i>General Terms of Approval for proposed development requiring approval under S89,90 or 91 of the Water Management Act 2000</i> " by letter from <i>Water NSW</i> .

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs),

Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

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

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

Other Service Infrastructure Authorities

The application was not required to be referred to *Transport for NSW* and no other Service authority referral issues are raised. The requirements of *Sydney Water* are managed by separate administrative processes directly with *Sydney Water*.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

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

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

Comment:

The proposal is within the surroundings of the Manly CBD and opposite the ocean beachfront reserve. The development will not create an adverse management impact on the beach / ocean interface or any associated management plans for the precinct. The coastal use area extends across the site and surrounding land however the land is fully developed for commercial urban uses and does not have any remnant vegetation, special coastal landforms or rock outcrops and the like. Dewatering considerations are addressed by the GTS's provided by WaterNSW. The proposal is consistent with the requirements of development on land within the coastal environment area.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

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

Comment:

The coastal use area extends across the entire site and 80m landward of the site. The development is designed to fit in context with existing adjacent buildings fronting the beach and does not have an adverse impact on shadowing or views *from* the public reserve, public places. The building scale,

colour and external design has been designed to respond to surrounding considerations of streetscape, public access, the beachfront location and heritage conservation area. The proposal is consistent with development on land within the coastal area.

Division 5 General

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

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

Comment:

The site is not affected by the foreshore building line and will not create increased hazards within the coastal environment. Structural support for adjacent buildings must be provided during demolition and site works to ensure safety of adjacent land in the sandy soil. This is addressed by geotechnical report provided by the applicant, conditions and recommendations.

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 is consistent with coastal management of the beachfront land, including management of stormwater (subject to GTA's), excavation and access, subject to conditions.

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

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential (2 dwellings) and later redeveloped commercial purposes (restaurant and commercial) for a significant period of time with no prior land uses. In this regard, it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the commercial land use.

An Acid Sulfate soils investigation was conducted which concluded that:

"Based on the findings of this investigation, ASS do not appear to be present at the site. An Acid Sulfate Soils Management Plan (ASSMP) is therefore not required for the site."

Council is satisfied that the land can be made suitable for the purpose for which the development is proposed to be carried out.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	10m height plane (front portion facing Manly Beach) 12m height plane (rear portion fronting Rialto Lane)	11.3m to 14.2m 11.3m (roof), 14.7m (lift) 14.7m (plant)	13% to 42% 0% 18.3% 19.2%	No* Yes No* No*
Floor Space Ratio	2.5:1 (Clause 4.4(2A) of MLEP permits additional 0.5 floor space in the zone if 50% GFA is commercial)	Site area 1,757.04 sqm (up to 2,070.6sqm FS permitted by clause 4.42A) FSR 1,791.06 sqm (0.3:1) Proposed : 2.59:1	Nil	Yes

Building height limits as shown below (red dashed line images below) measured to existing ground level (EGL).

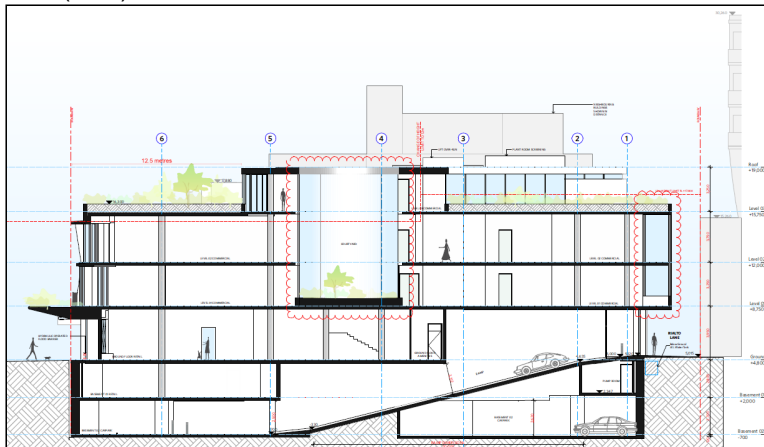
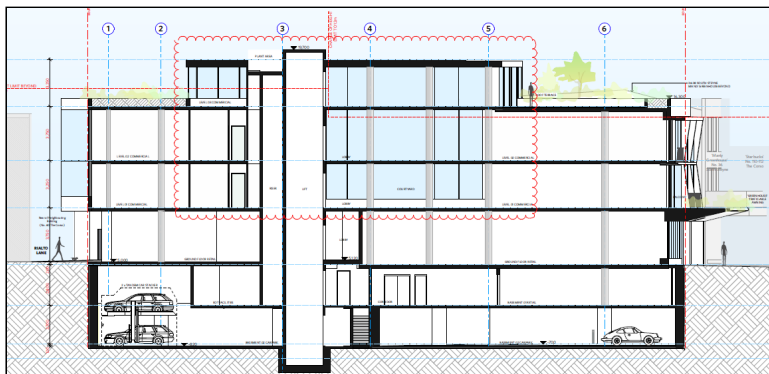


Image: Section showing void (near north elevation and height variation between rear (12m envelope) and front (10m envelope)



Section showing stair core changes (clouded). Height variation between rear (12m envelope) and front (10m envelope) on front (east) edge of lift / stair core.

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.11 Active street frontages	Yes
6.12 Essential services	Yes
6.13 Design excellence	Yes
6.16 Gross floor area in Zone B2	Yes
Schedule 5 Environmental heritage	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
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Site Requirement:	10m (front portion) and 12m (rear portion)
Proposed:	10m envelope - Up to 14.2m height being 4.2m over. 12m envelope - Compliant in part and up to 14.7m (lift) being 2.7m over.
Percentage variation to requirement:	42% - front portion (10m envelope) 0% to 19.2% - rear portion (12m envelope)

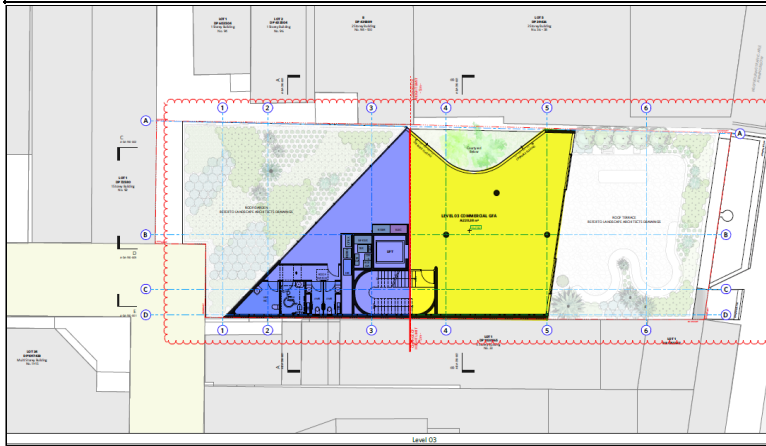


Image: Height limit control line (red) through mid section with rear 12m (blue) Level 3 floor space being partly above maximum height and at front 10m (yellow). Noted the corner balcony position of apartments behind in Rialto Lane shown Open terrace at front of proposed building is also above 10m height control.

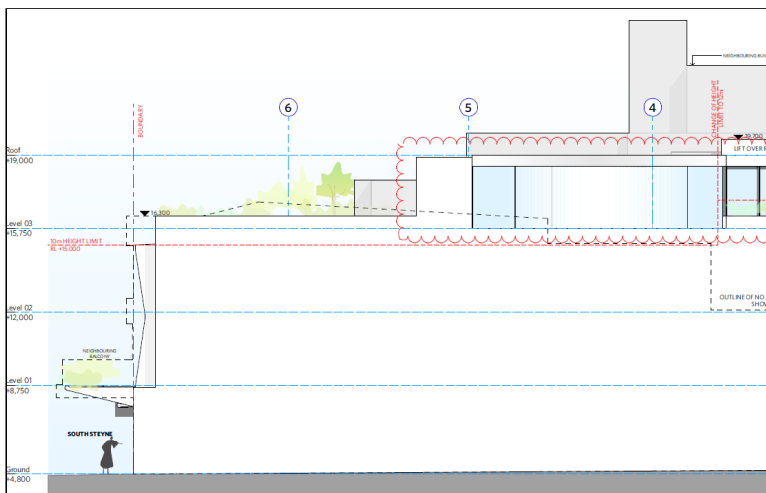


Image: Side elevation (north) at 10m height line (front).

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).

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.*

The applicants written request argues, in part:

- "The proposed development is maintained well below the maximum permitted floor space ratio, which is the primary development standard to control the bulk and scale of development.
- The front parapet height of the development has been designed to marry with the height of adjoining buildings.
- The proposed development has been designed to align with the levels of adjoining buildings, with views of the ocean and the Norfolk Island Pines that line the foreshore maintained over the top of the proposed development. Disruptions to views haven been reasonably minimised.
- The non-compliant elements of the proposed development do not result in any adverse impacts upon the amount of sunlight received by adjoining properties.
- The proposal has been reviewed by Council's Design and Sustainability Advisory Panel, who raised no objection to the height of the proposed development, or the variations proposed.
- The increased height at the rear of the development is set back from the primary street frontage and will not be readily visible as seen from South Steyne.
- The height of the building presenting to Rialto Lane is contextually appropriate, having regard to the increased height anticipated by MLEP 2013 and the height of surrounding and nearby development."

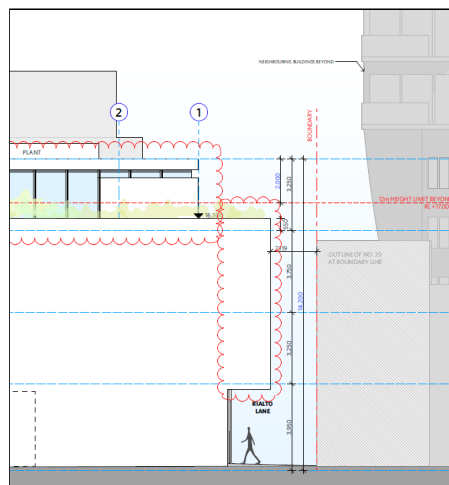
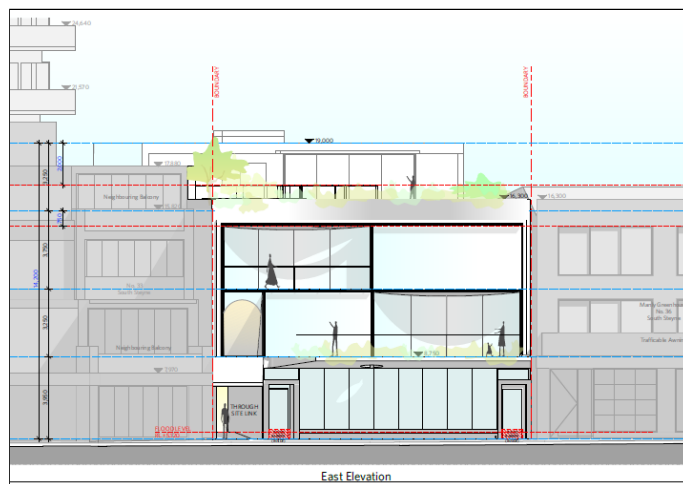


Image: East elevation of the building viewed from South Steyne. Image: Side elevation (north) at 12m height line (toward Rialto Lane).

Comment:

- The E1 Local Centre zone is not a recreation or environmental protection zone however the height non-compliance does not create unreasonable loss of sunlight to the beach area in the afternoon period.
- The height line mapped in the LEP creates an inconsistent development pattern between adjacent sites being off-set and without any view appreciation. The proposal responds to view concerns in seeking to share the view line and particular elements such as views to Queensliff headland without unreasonably affecting other views across the site from higher level apartments overlooking the site (above RL17.0).

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 E1 zone. An assessment against these objectives is provided below.

Objectives of development standard - Height of Buildings

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 topographic landscape is a coastal beachfront environment within the central business district area of Manly and building heights within the heritage conservation area (HCA) are generally lower than the outer surroundings. The desired future character (DFC) encourages similarities in parapet and building heights along the primary street frontages with higher elements setback to minimise visual impact on the public domain within the HCA. Views toward the ocean and harbour are important considerations in the pattern of development for the DFC. The proposal has reshaped the top floor which involves a larger non-compliance in building height (of the upper built form) being transferred forward within the 10m height limit area, closer to the beach front. This has been considered acceptable in that it assists to accommodate residential view issues (diagonal views) across the rear of the site, however the top storey is still stepped back sufficiently to ensure it is not overbearing to the beach front and is positioned similar to the prevailing higher setback and upper storey alignments along No.30-33 South Steyne. A lesser non-compliance is also proposed across the parapet line due to the roof terrace area that forms a landscaped terrace and balustrade toward the beach front. However this height line matching is consistent with the adjacent building to the north (No.36 South Steyne).

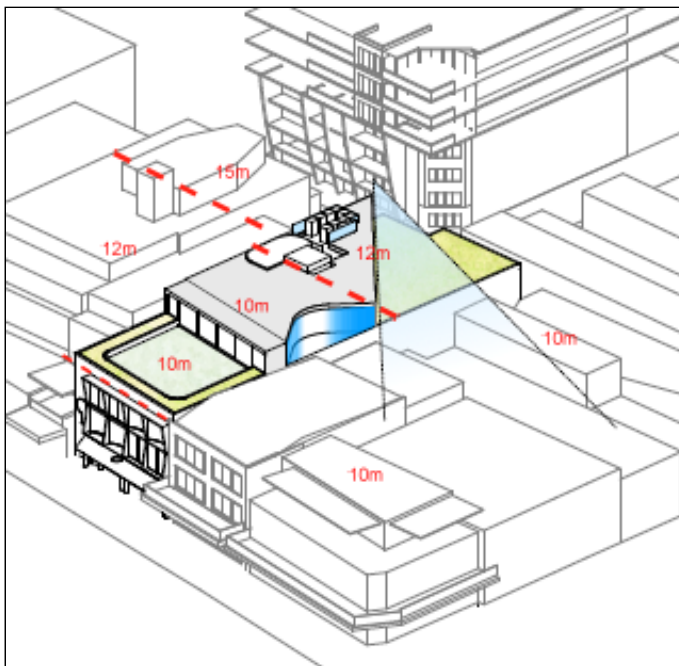


Image: LEP Height of building areas adjacent along South Steyne and the 10m to 12m division line across middle of site with bulk / FSR pushed forward for view sharing response. (Roof landscaping shown (green) and lightwell shown (blue) for the building proposal)

b) to control the bulk and scale of buildings,

Comment:

The proposal has been revised during the assessment period to rationalise the floor space arrangements and accommodate view lines. The MLEP envisages a higher storey at the rear fronting Rialto Lane with the building bulk setback from the beachfront however the application assessment, including consideration of height variation considers view issues also from the properties overlooking the site. Therefore, the upper building bulk has been partially pushed forward (and reshaped) from within the 12m height control area to within the lower 10m height

control envelope.

The building remains compliant with the permitted FSR but the distribution of FSR has required and alternative design approach to achieve design considerations to accommodate views. The design controls from Manly also seek a balance of masonry and glazing to be proportionate for townscape considerations that assist with bulk and scale considerations such as avoiding large continuous flat glass wall planes by breaking up facades with different design elements appropriate for the HCA. The proposal has been revised to better address this and subject to additional conditions, is satisfactory.

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:

A comprehensive view analysis has been provided by *Urbaine Design Group* to respond to the objectives of this clause and inform the design approach that triggered amendments to the upper storey in order to accommodate competing view lines. This includes views from the most critically affected Units at level 5 and 6 and in this regard views across the site are toward the north and east with a distinct diagonal view line toward Queenscliff. However the closeness of the beachfront (downward view) is also a principal consideration to minimising view impact along the close foreshore area that is also a consideration for Level 6 & 7 units behind the site. Overall across part of the rear 12m envelope area the building envelope has been complied with and this higher envelope contains the lift shaft positioned near the southern side. Retaining a diagonal viewline toward Queenscliff (north) has been achieved by a taking a pragmatic approach to the DCP / LEP height controls. Across the lower 10m envelope area toward the front the height variation is greater as part of top floor has been shifted forward due to the rear changes. View impacts (east to foreshore zone) have been minimised by considering the parapet heights, rooftop equipment and rationalising floor space layouts.

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 non-compliance with the 10m and 12m height line shown will not create unreasonable loss of sunlight to the Manly foreshore / beachfront reserve or adjacent private open space. The upper storey (Level 3) is setback 12.5m from the front boundary and the parapet height at the beachfront is consistent with the adjacent property of No.36-38 South Steyne.

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 building is not within an LEP recreation zone or environmental protection zone where there is steep topography or bushland areas with significant vegetation. The proposed building height (and variations proposed) will not impact the Norfolk Pine or coastal reserve vegetation along the beachfront.

Zone objectives

The underlying objectives of the E1 Local Centre zone are:

- *To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.*

Comment:

The proposal is for commercial use and will promote retail activity, food and beverage and employment (commercial / offices) within the area. The building has EOT facilities and is consistent with this objective. The non-compliance does not unreasonably detract from this objective. Eliminating Level 3 entirely (for views or other reasons) would further limit this objective given the FSR allowances on the site.

- *To encourage investment in local commercial development that generates employment opportunities and economic growth.*

Comment:

The proposal is of a contemporary design which includes particular design features to encourage a high quality working environment. The site benefits from the surrounding beachfront amenity which has influenced the design. The non-compliant building height seeks consideration to distribute commercial floor space in response to site considerations and surrounding residential amenity considerations. The height variation is not inconsistent with this objective.

- *To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.*

Comment

The proposed use includes food and beverage use as well as activation of the street frontage and through access for pedestrians. The proposal does not include any residential use.

- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*

Comment

The proposed ground floor of the building is consistent with this objective and the height non-compliance does not adversely affect future business use of the ground floor.

- *To minimise conflict between land uses in the zone and adjoining zones and ensure amenity for the people who live in the local centre in relation to noise, odour, delivery of materials and use of machinery.*

Comment

The top floor non-compliant elements are proposed as commercial (office style use) and the basement area allows for delivery and internal transfer of to 'back-of-house areas'. The plant machinery is concealed / screened and co-located with adjacent (similar) building elements to minimise disruption and view / amenity impacts. The upper terrace area includes landscaped planter box setbacks and faces the oceanfront (away from residential apartments in Rialto Lane). The rear roof section is partially covered with landscape treatment for amenity of views that occur diagonally across the site. (This triangular roof area at the rear is below the 12m height control and provides a more suitable roof treatment to a bare reflective surface)

- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*

Comment

The proposal achieves this objective by way of though access for pedestrians along the southern passageway that is clearly defined and the operable shop fronts to Rialto Lane and

South Steyne.

- *To create urban form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment.*

Comment:

The proposal includes landscaped treatment at roof level across part the rear of the building and for the terrace at the front. The front terrace height non-compliance includes landscape elements and assist to match the parapet level to the adjacent building to the north that is within the HCA. The lowering of the parapet planter box to comply with the 10m height line does not achieve significant view gain for apartments that overlook the site from Rialto Lane. The placement of PV cells on the roof is likely to add "clutter" and contribute to view impacts and therefore this is not conditioned in this circumstance.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the E1 Local Centre zone.

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the *Height of buildings* Development Standard is assumed by the Local Planning Panel.

5.10 Heritage conservation

The objectives and requirements of clause 5.10 *Heritage conservation* are considered as follows:

- *to conserve the environmental heritage of Manly,*
- *to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
- *to conserve archaeological sites,*
- *to conserve Aboriginal objects and Aboriginal places of heritage significance.*

Assessment Comments

- The site not a heritage item and does not abut any heritage items that would be placed at risk by the proposed work / demolition or built form.
- The site is not a heritage item but is situated close to the Corso and other heritage buildings that "read" collectively from the public domain as part of the wider streetscape near the building. The site is within the Heritage Conservation Area and in this regard, colours,

materials, detailing, window styles, wall massing, height and general appearance of the building should be responsive and sympathetic to the desired future character. The new building is contemporary in its modern styling and internal floor components. A number of refinements to the design have been made to ensure the building is not jarring or copies other unsympathetic responses to the LEP. Additional special conditions are recommended for the HCA streetscape.

- No known archaeological sites (European or Aboriginal) have been identified on the site.
- The site is not adjacent or contain any known archaeological objects. Should objects be found during excavation, conditions are included to ensure appropriate management and handling of any relics.

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

6.1 Acid sulfate soils

Clause 6.1 - 'Acid sulfate soils' requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works. Works at depths beyond 2.0m below the natural ground surface and/or works by which the watertable is likely to be lowered more than 2.0 metres below the natural ground surface within a Class 4 acid sulfate soil area are required to be assessed to determine if any impact will occur.

The site is located in an area identified as Acid Sulfate Soil Class 4, as indicated on Council's Acid Sulfate Soils Planning Map and the applicant has provided a detailed geotechnical report addressing acid sulfate soils management. Council's Environmental Health Officer has reviewed the details and provided comments and conditions. (See heading - Internal Referrals within this report)

6.2 Earthworks

The objectives of clause 6.2 *Earthworks* are considered as follows:

- *to ensure that earthworks and associated groundwater dewatering 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,*
- *to allow earthworks of a minor nature without requiring a separate development consent.*

Assessment comment:

- The site is within area "G3" for landslip risk and is a coastal (sandy) location for earthworks. In consideration, due to the basement depth and excavation the proposal was referred to WaterNSW for groundwater impact assessment and WaterNSW has provided *General Terms of Approval* to address nominated integrated referral requirements pursuant to the *Water Management Act 2000*.

- Currently the site has no basement area and therefore supporting works for excavation and basement (including dewatering) will be required that have been addressed by conditions (including recommended dilapidation surveys prior to work and construction management program).
- The proposal has been provided with a geotechnical assessment by engineering consultants to address soils and excavation including potential risk to adjacent development. Additionally protection measures (including bonds) will be required for council assets (footpath / road area).
- The proposal does not require landfill / backfill to reshape the land surface / landscaped ground level areas.
- The likelihood of disturbing relics is low given the prior re-development of the land from housing to the existing commercial building. However, conditions are recommended to ensure that any relics if uncovered / identified by future site excavation works that they are appropriately managed / identified.
- The proposed excavation works are not likely to adversely impact any waterways or drinking water catchment and water quality considerations are subject to recommended conditions by Council's water quality referral (see details under the heading "internal referrals" within this report).
- Appropriate conditions are recommended to avoid, minimise and mitigate impacts of the development.

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

6.11 Active street frontages

The proposal will maintain its active street frontage to Manly Beach front and South Steyne sidewalk with open plan ground floor area and a walk-through passageway that will connect to Rialto Lane. The passageway and rear frontage (to Rialto Lane) is open to assist activation of the laneway area. Generally services are concealed or confined to basement areas to encourage a more attractive laneway area. Conditions are recommended to enhance the rear (massed wall glazing) elevation to be more sympathetic to the current laneway appearances in Rialto Lane and other parts of the CBD Heritage Conservation Area, to include more traditional style fenestration window to masonry proportions and styling) and not a flat massed glass wall elevation (as shown).

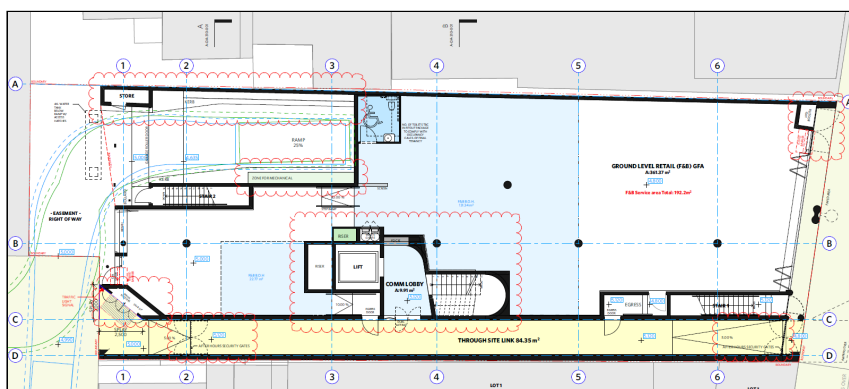
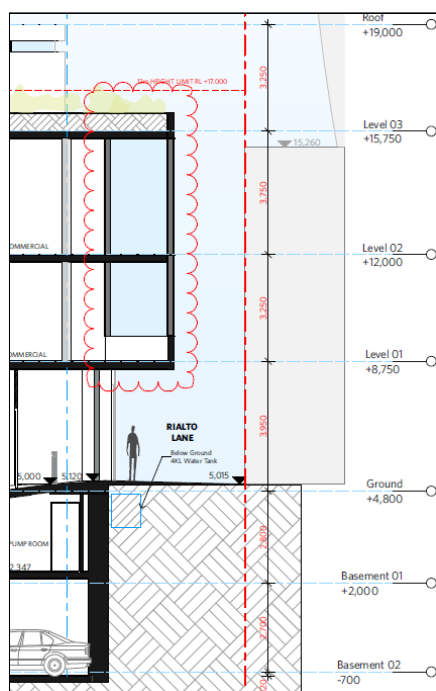


Figure: Ground floor shows walk through link between Rialto Lane and the beachfront. The passageway has security gates / doors manage access hours and within the ground floor retail / commercial space (white) and food and beverage "back of house" areas are shown (blue). Vehicles

6.12 Essential services

- The site has existing connections to Sydney Water for sewerage and water supply (Sydney water requirements are managed by separate administrative processes directly with Sydney Water).
- Electricity supply requirements (including safety and change to lines / Ausgrid assets) have been provided via referral response from Ausgrid. (See details under the heading 'External referrals' within this report.)
- Council's Stormwater Engineers are satisfied stormwater management, stormwater plans and flood risk considerations subject to conditions as recommended. (See details provided under the heading "Internal referrals" within this report.
- Access, parking and traffic considerations have been addressed by Council's Traffic Engineer, including vehicle access construction management and requirements or a construction traffic management plan.



- Conditions are included to ensure reasonable traffic access is maintained along Rialto Lane during works and construction management is coordinated to ensure minimal disruption to the laneway and pedestrian access (including South Steyne).

6.13 Design excellence

The objectives and requirements of *Clause 6.13 Design Excellence* are considered as follows:

- *The objective of this clause is to deliver in Manly the highest standard of architectural and urban design of buildings and public spaces. Development consent must not be granted for development to which this clause applies unless the consent authority considers that the development exhibits design excellence.*

Assessment comment:

- The proposal has been reviewed by DSAP and pre-lodgement process. DSAP and pre-lodgement assist to commence the assessment issues that are considered throughout the DA process. Detailed considerations that have required further changes commonly include matters of public interest raise in submission and internal referrals as well as development assessment matters. In this regard the DA has been subject to amendments and conditions area recommended to further address design excellence considerations. These generally relate to minor refinements to the facade / glazing / materials and ancillary elements of the building. Overall the building design has been subject to adjustments to rationalise floor space, improve building services installations / internal access arrangements / amenity / vehicle parking and the like.
- Substantial reshaping of the top floor has occurred during the assessment process to assist with view considerations and amenity for adjacent residential properties. This includes simplifying roof top elements such as the use of roof landscape planting, deleting the roof pool, removing "clutter" and alignment of facade elements.
- Additional detailed consideration is also provided pursuant to 4.2.5.1 *Design for Townscape*, Clause 4.2.5.2 *Height of Buildings: Consideration of Townscape Principles*, Clause 5 *Special Character Areas and Sites*, and Clause 5.4.1 *Foreshore Scenic Protection Area* within this report.

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

6.16 Gross floor area in Zone B2

Clause 6.16 includes requirements in the B2 Zone (now termed "E1") for gross floor area to encourage development for diverse business activities, including retention of local services and employment.

The Zone B2 Local Centre encourages that at least 25% of the gross floor area will be used as commercial premises which the proposal achieves. The maximum GFA permitted is 2,070.6sqm (3:1). The amended development has a gross floor area of 1,791.06m² and a floor space ratio of 2.59:1.

The zone however also restricts retail floor space on the land to less than 1,000sqm. In this case, the revised floor layout includes 137.51sqm retail in the basement (see image below) and 361.37 sqm at

ground level. (Total 498.88sqm).

The commercial floor space provided totals 1,292.18sqm which is 72% of the proposed building floor space (for use as commercial premises).

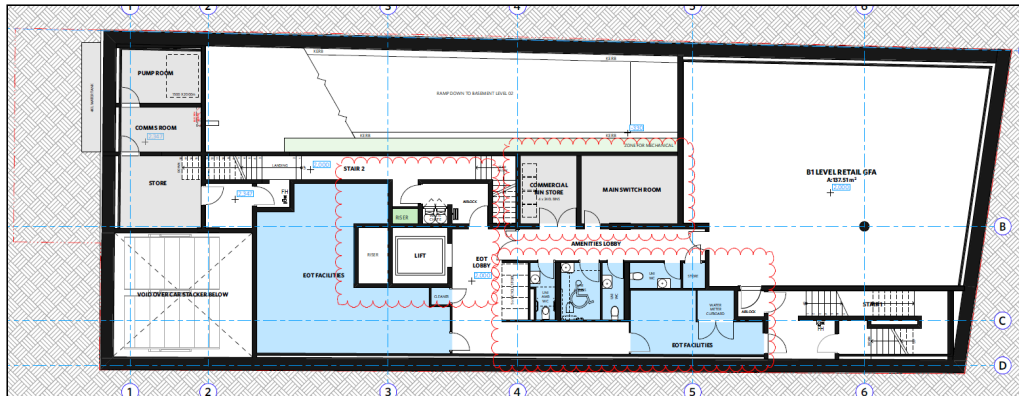


Figure: Upper basement level includes retail area, "end of trip" facilities for staff, services equipment space and carpark ramp access.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the design is supported subject to conditions (to ensure nominated commercial to retail space remains consistent when the building is occupied; see DSAP comments).

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area:	Requirement	Proposed	% Variation*	Complies
4.2.1 FSR (Consideration of Exceptions including Arcades)	Arcade and plant rooms exceptions	Building includes walk through arcade and equip.plant rooms	N/A	Yes
4.2.2 Height of Buildings in Business zones	Exceptions considered for "design excellence"	Split height plane of 10m and 12m across site. Variation proposed accomodate views.	13% to 39%	No*
4.2.3 Setback Controls B1 and B2 zones	Nil - Established building line and townscape principles apply	Consistent with prevailing setback Fire rated sidewall masonry / concrete	N/A	Yes*
4.2.3 Active Street frontages (Rialto Lane)	Townscape Principles apply	Open style frontage to beachfront and Rialto Lane	N/A	Yes*

4.2.8.1 B2 Local Centre - Height	Demonstrated townscape improvement No unreasonable loss of sunlight, views, privacy	Height variation proposed to 10m and 12m control	13% to 39%	No*
4.2.8.2 B2 Local Centre - Setbacks	Conforms to established building alignments	No adjacent residential zone Wall setback on boundary line	N/A	Yes*
4.2.8.3 B2 Local Centre - Landscaping	20sqm per dwelling	No dwellings. Landscaping part of building design	N/A	N/A
4.2.8.4 B2 Local Centre - Residential Density	Density may be varied subject to clause 4.1.1.1	No residential component proposed	N/A	N/A
4.2.8.5 B2 Local Centre - Carparking, Vehicular Access	Lane access should be used Loading bay appropriately placed.	Rialto Lane access Loading bay in basement	N/A	Yes*
4.2.8.6 B2 Local Centre - Hours of Operation	Acoustic privacy and deliveries Hours of operation consider adjacent residential	Commercial use. Basement delivery dock Subject to plan of management / "Use" (DA).	N/A	Yes*
4.2.8.7 B2 Local Centre - Packaged Premises / Outlets	Serving of Alcohol require community impact statement	Subject to community impact statement and licencing laws	N/A	Yes*
4.2.8.8 B2 Local Centre - Waste Management	Waste minimisation Garbage store design	Subject to plan of management for use. Complies with Council Waste services	N/A	Yes
4.2.8.9 B2 Local Centre - Signage	Subject to Heritage conservation area A Frames / wall signs / illumination	Subject to general requirements as per Clause 4.4.3	N/A	Yes*
4.2.8.10 B2 Local Centre - Local Character	Subject to Townscape Design Principles	Local site characteristics applied	N/A	Yes*
4.1.4.5 Foreshore Building Lines and Foreshore Area	Mainly foreshore and scenic protection area	Not within foreshore building line. Scenic protection area	N/A	Yes
4.2.5.4 Car Parking and Access	Basement permitted	Basement by ramp - Rialto Lane	N/A	Yes
4.4.5 Earthworks	Not within 0.9m of side and rear	0.0m to side boundaries	100%	No*

	boundaries	1m depth except for parking		
Schedule 2 Townscape principles	Pedestrian links Laneway revitalisation	Pedestrian link arcade link to Rialto Lane from beachfront	N/A	Yes*
Schedule 3 Parking and Access	Parking exceptions considered on merit Loading bays 7.6m x 3m x 3.4m	13 carspace + Loading bay + 5 bike racks. (7m x 3m x 2.5m)	N/A Height and depth	No* No*

* See detailed merit assessment under the relevant section heading within this report.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	No	Yes
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	No	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
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.6 Energy efficiency/conservation requirements for non-residential developments	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.2 Development in Business Centres (LEP Zones B1 Neighbourhood Centres and B2 Local Centres)	Yes	Yes
4.2.1 FSR (Consideration of Exceptions including Arcades)	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)	No	Yes
4.2.3 Setbacks Controls in LEP Zones B1 and B2	Yes	Yes
4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor	No	Yes
4.2.5 Manly Town Centre and Surrounds	Yes	Yes
4.2.5.1 Design for Townscape	Yes	Yes
4.2.5.2 Height of Buildings: Consideration of Townscape Principles in determining exceptions to height in LEP Zone B2 in Manly Town Centre	No	Yes
4.2.5.3 Security Shutters	Yes	Yes
4.2.5.4 Car Parking and Access	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.3 Signage	Yes	Yes
4.4.4.1 Awnings in LEP B1 and B2 Business Zones	No	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	No	Yes
5.1.1 General Character	Yes	Yes
5.1.2 The Corso	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes
Schedule 2 - Townscape Principles	Yes	Yes

Detailed Assessment

3.1 Streetscapes and Townscapes

The objectives of *Clause 3.1 Streetscape and Townscape* are considered as follows:

- *To minimise any negative visual impact of walls, fences and carparking on the street frontage.*
- *To ensure development generally viewed from the street complements the identified streetscape.*
- *To encourage soft landscape alternatives when front fences and walls may not be appropriate.*
- *To ensure that all parking provision is designed and sited to respond to and respect the prevailing townscape.*
- *To assist in maintaining the character of the locality.*
- *To recognise the importance of pedestrian movements and townscape design in the strengthening and promotion of retail centres.*
- *To minimise negative visual impact, in particular at the arterial road entry points into the Council area and the former Manly Council area, so as to promote townscape qualities.*

Merit consideration:

- The proposal will maintain wall alignments to the street, parapet and to adjacent land to ensure no unreasonable visual impact.
- The proposal has been amended to address streetscape considerations and condition are included to ensure the proposal compliments both South Steyne and Rialto Lane.
- The basement parking design maintains minimum visibility and impact on the townscape given the use of Rialto Lane for access. The size of the site creates a restriction on capacity to provide a full complement of car parking even with compliant FSR. The proposal will use car stackers and relies on available public transport, including walking access to the local public parking facilities.
- The subject site is located within the established Manly Town Centre area with the existing buildings on the site predating most other surrounding buildings. The commercial nature of the area and position close to the "Corso" means there is a mix of commercial and adjacent developments beyond the Corso has been accounted for in the design of the proposal and location at the edge of the HCA. The proposal is considered acceptable in relation to clause 3.1.3.
- The proposal is suitably designed to provide an active street frontage and maintain active streetscape contribution to South Steyne and remains consistent with this objective.
- The proposed upper level of the building is setback and has been amended to accommodated view lines without creating an unreasonable impact on the streetscape.

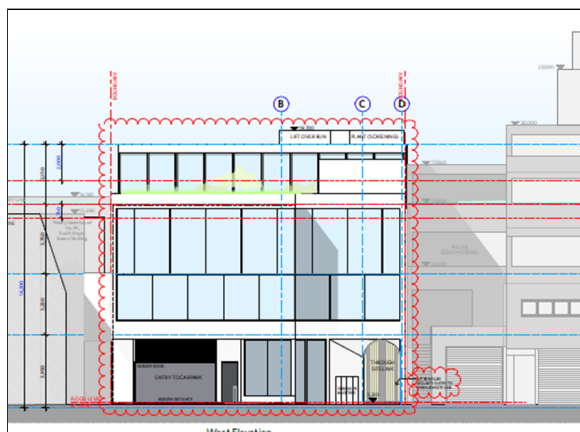
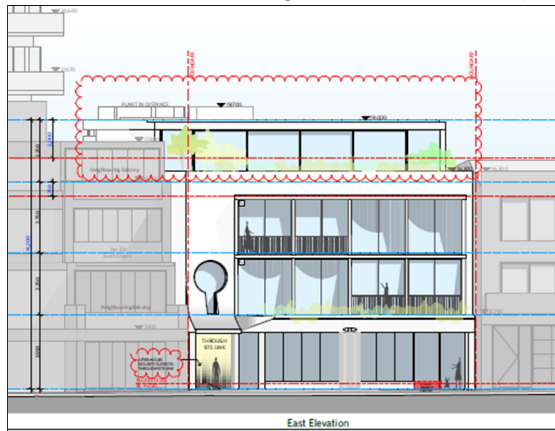


Image: South Steyne elevation appearance to adjacent buildings. Image: Rear (Rialto Lane) appearance and wall treatment.

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 design is supported and subject to conditions has addressed previous concerns.

3.1.3 Townscape (Local and Neighbourhood Centres)

The development is considered against the underlying Objectives of *clause 3.1.3 Townscape (Local and Neighbourhood Centres)* as follows:



Image: Street facade facing South Steyne - photomontage with new awning, pedestrian link and occupancy.

- *To ensure that all parking provision is designed and sited to respond to and respect the prevailing townscape.*

Comment:

The parking design will minimise its visibility and impact on the townscape by maintain basement parking. Given high visibility of the site along the beachfront, in terms of its position close to The Corso, site width and identification to laneway connection including (activation / through access), the parking design and vehicular access is considered to be appropriate for the design and the changes during the assessment period proposed remain consistency with this objective to provide basement

parking on site.

- *To assist in maintaining the character of the locality.*

Comment:

The subject site is located within the established surroundings of Manly Town Centre and HCA. Development located within the central part of Manly is predominantly characterised by a mix of commercial and shop top housing developments with the majority varying between 3 to 6 storeys in height. The proposal is considered acceptable in relation to the LEP provisions for Townscape considerations and consistent with this objective, subject to conditions.

- *To recognise the importance of pedestrian movements and townscape design in the strengthening and promotion of retail centres.*

Comment:

The proposal is suitably designed to provide an active street frontage and activate this section of the established area around Manly Town Centre and remains consistent with this objective.

- *To minimise negative visual impact, in particular at the arterial road entry points into the Council area and the former Manly Council area, so as to promote townscape qualities.*

Comment:

The proposed upper level of the building is setback and the non-compliance with the height control is not significant enough to have an adverse visual impact on South Steyne with the amended plans, given the pattern of surrounding development and the way the building addresses street and its site characteristics. The subject land is a mid-street position and therefore not subject to more onerous considerations of being within 'The Corso', however the wider HCA contributes to the urban setting and assists to complement the public domain around the wider area.

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, subject to conditions, is supported.

3.4.1 Sunlight Access and Overshadowing

The objectives and requirements for *Clause 3.4.1 for Sunlight access and Overshadowing* are addressed as follows:

- *To provide equitable access to light and sunshine.*
- *To allow adequate sunlight to penetrate: private open spaces within the development site; and private open spaces and windows to the living spaces / habitable rooms of both the development and the adjoining properties.*
- *To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by: encouraging modulation of building bulk to facilitate*

sunlight penetration into the development site and adjacent properties; and maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.

Comment:

- Detailed shadow diagrams DA-720-001 have been provided, dated 27.7.23 demonstrating that in the morning there is no unreasonable loss in solar access / overshadowing between 9am and 12pm on the 21 June for adjacent land, including Rialto Lane. Generally Rialto Lane at ground level is in self-shadow for the majority of the day on 21 June due to the narrow building separation and height of buildings. The adjacent premises of No.33 South Steyne (along the southern boundary of the site) is a commercial building and the principal outlook is toward the beachfront in that this building includes wide front balcony areas. The rear overshadowing between 12pm and 3pm does not create unreasonable loss of sunlight in the afternoon period given the density of surrounding development, changes to the upper storey made and applicable height controls.
- The changes to overshadowing will not cause unreasonable loss of light to solar collector systems or permanent clothes drying areas (including communal living spaces)
- The requirements of this clause also include consideration of potential reflectivity to adjacent land (nuisance glare or reflectivity nuisance). In this regard the rear elevation facing Rialto Lane has large sections of glazing that are unshielded and potentially create glare from western sun at times toward adjacent residents apartments on the opposite side of Rialto Lane. Conditions are recommended for increase shading / cosmetic changes to framing and window fenestration that will address clause 3.4.1.5.

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 design is supported, subject to conditions.

3.4.2 Privacy and Security

The requirements and objectives of *Clause 3.4.2 Privacy and Security* are addressed as follows:

- *To minimise loss of privacy to adjacent and by appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings and mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings. Balance outlook and views from habitable rooms and private open space.*
- *To increase privacy without compromising access to light and air.*
- *To encourage awareness of neighbourhood security.*

Assessment Comment:

- The proposal is for commercial use and hours of operation for the ground floor will consistent with food and beverage cafe / restaurant uses currently at the premises. Acoustic privacy is therefore manageable by operational controls for any future change of use at the ground level,

including limiting access late at night though to Rialto Lane. This is addressed by conditions for applicant to nominate for future "first use" DA. Hours of operation for the commercial floors (upper 3 storeys) are intended to be office based uses and therefore privacy is manageable by the use of custom screens / louvres to selected rear windows to minimise privacy impacts where floor levels are similar or higher than adjacent residential apartments. Limited detail is shown for privacy consideration of window glazing facing Rialto Lane and therefore conditions are recommended to address this issue.

- The upper floor are for commercial purposes and the building is constructed across with width of the site similar to adjacent commercial premises. The building height and upper storey areas have been shaped to assist with view corridors and do not create unreasonable loss of light to surrounding development. Privacy considerations toward the rear mainly arise from office areas at the upper levels that may view into or toward apartments on the opposite side of Rialto Lane. Conditions are included for adjustment to the fenestration / inclusion of selected screening (eg internal louvers or the like) to limit overlooking into adjacent apartments to the southwest.
- The proposal maintains suitable security and passive surveillance of the street front and the new pedestrian link to Rialto Lane by inclusion of security doors and the street activation with open shop front facing Manly Beach and Rialto Lane. The proposal is a commercial / retail development and therefore does not require additional residential access within the building.

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 design is supported and subject to conditions.

3.4.3 Maintenance of Views

This assessment considers view loss from the corner Units between level 5 and 7 of the "Peninsula Building" (No.25 Wentworth Street, Manly) as the principle view line angles and generally in the context of surrounding buildings (including adjacent apartments as per submissions). (Note: Where access is not possible due to availability, restrictions or the like, survey information and comparison with existing site assessment details and suitable vantage points is used including geographic related information, photos, diagrams and the like already held within Council's systems / files for DA2022/1164. A comprehensive view analysis has been provided by *Urbaine Design Group* to assist the view impact assessment with renders of the proposed building and changes made inconsideration of the LEP/DCP controls).

Merit consideration:

The development is considered against the Objectives of the Control:

- *To provide for view sharing for both existing and proposed development and existing and future Manly residents.*
- *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).*

- To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.

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

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

Comment:

This assessment has considered the principal view lines outlined in terms of view corridors associated with sight lines toward Manly Beach including off shore areas and the more diagonal view toward Queenscliff headland. The dominant features of the view is the ocean area, Norfolk Pines and surf zone interface including distant headland view and closer elements of beach. A comprehensive range of view photos / photomontages was provided by the applicant as part of the view considerations and site inspections were also conducted to observe the various viewing angles and surrounding pattern of development.

The view analysis undertaken has prompted design changes during the assessment period in order to address the valued elements of the view and the present building height control permitted by the LEP on the subject site.



Images: View corridor across the site from Level 6 and Level 7 montage of proposed building.

Broad views are toward the north and east includes coastal surf area and ocean views toward Queenscliff Beach. Views of main Manly beach foreshore area also directly in front of the site. View also extends toward Shelly beach.

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:

The principle views of priority are from a standing position in the corner balconies at Level 5 Level 6 and Level 7. The views toward the north from these corner apartments are across Rialto Lane, the rear boundary and side boundaries of the site. Easterly views are also gained directly through the centre of the site which is also difficult to protect due to competing view lines in northerly direction and

easterly direction. Site inspection revealed that sitting views and views from other rooms toward the south of the corner balcony are more difficult to protect than standing views of the corner living area / balcony due to the pattern of surrounding development, including diagonal view line.

Other views considered include adjacent Units within No.25 Wentworth Street, as well as upper floors of No.30-33 South Steyne and No.36 South Steyne. For properties directly adjacent the site (fronting South Steyne) the retention of side views is unrealistic given the requirement to align building facades along the street frontage. However the upper setback (Level 3) proposed is setback with only a roof terrace area. The non-compliant height of the front parapet is associated with the landscape planter edge and aligning the parapet with the adjacent parapet to the north that is within the HCA.

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

Comment:

At Level 7 within No.25 Wentworth street broader views are available that include views toward Shelly Beach area and the urban outlook of north Manly area, including coastline toward Queenscliff and ocean area. Due to the higher viewing angle elements of the beachfront are also part of the view in a downward angle due to the lower existing building. The proposal will impact this view of beach foreshore due to the terrace balustrade and parapet edge that breaches the 10m height line.

Considering the whole of the view, including adjacent rooms to the balcony, kitchen, eating areas the view impact from Level 7 is considered minor.

At Level 6 within No.25 Wentworth street broader views are available as per Level 7 however a more restricted view of the beachfront is available (and will be obstructed by the proposal in filling the existing "gap"). Views toward Shelly Beach are restricted by the previous re-development of No.30-32 South Steyne. Considering the whole of the view, including adjacent rooms to the balcony, kitchen, eating areas the view impact from Level 6 is considered moderate.

At Level 5 within No.25 Wentworth street views are generally more restricted in that Level 3 within the proposal will block any through views Manly beach shore area / ocean. However a viewline toward Queenscliff headland is above to be accommodated by reshaping of the top floor that increases the non-compliant floor space forward and further into the 10m height limit area. However due to the upper storey setback and the forward edge of the parapet and repositioned roof to services the impact is less severe. If the proposal was to build out the rear 12m height envelope the impact Unit 535 would be devastating view loss. This has been reduced to severe however given the 10m to 12m height control and permitted FSR the impact is considered acceptable.

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:

The proposal breaches the height plane within the 12m height plane and the 10m height plane areas across the site. The non-compliance has been subject to redesign and reshaping of Level 3 within the proposal in order to accommodate competing view lines. In this regard the proposal has sought to provide a more skillful design by redistributing floor space forward to maintain an diagonal view corridor toward Queenscliff headland to address view impacts Unit 535 within No.25 Wentworth Street. This change however has sought to also minimise unreasonable impacts to northern corner Units 6 and 7 above that have broader coastal views and close views of the Manly beachfront.

Conclusion on the view assessment.

A detailed view analysis in has been provided to indicate the main view lines at critical levels and angles for adjacent apartments. Site inspections and photos on file also provide overall view considerations from surrounding land at appropriate vantage points.

This assessment considers that the amended plans, dated 21.7.2023 and view analysis made by Urbaine Design Group (including Architectural montages by *Durbach Block Jaggers*) with the re-submitted design achieves a more skillful design to minimise unreasonable impact on views including consideration of the height non-compliance, permitted building heights and pattern of surrounding development. (Refer to detailed site photos and montages with development application as reporting software tool cannot 'hold' additional complex images.)

3.9 Mechanical Plant Equipment

In consideration of this clause, including *Clause 3.9.2 Roof-top Plant, Lift Towers* and *Clause 3.9.3 Noise from Mechanical Plant* the positioning and distribution of plant equipment, building service infrastructure and the like has been amended during the assessment period. The roof plant is now located in a screened enclosures in the mid section of the roof and the rear part of the roof replaced by a landscaped rooftop planting. Fire booster space is concealed or screened within the ground floor or basement area. Ducting space is also provided for to accommodate future likely uses such as restaurant. Conditions are recommended to ensure no use of the upper floors as restaurant / food and beverage or "club" style uses being that a significant consideration of the proposed re-development is for commercial office space which has lower parking and intensity of use (lower amenity impacts nearby apartments) than "venue-style" food and beverage uses.

Council's Environmental Health officer has assessed noise and acoustic impacts in accordance with the development application details and provided specific conditions to address environmental health considerations. See details within this report under the heading "Internal referrals".

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 design is supported, subject to conditions.

4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)

The proposal and building height variations have been considered pursuant to *clause 4.2.2.1 Exceptions to Height for Design Excellence* and the merit assessment by way of Section 4.56 and detailed assessment under Clause 4.6 of the LEP. Considerations of the circumstances, including "reasonableness" of the height variation, given the adopted LEP arrangement of building heights along

South Steyne and associated provisions to achieve FSR distributed within that permissible building height. The proposal has been amended to accommodate competing view considerations and requirements of the DCP of amenity and design controls. This is addressed under the heading "Height of Buildings" within this report.

In summary, this also includes broader considerations of the environmental planning grounds to justify contravening the development standard (LEP clause 4.6(3)) including the design principles at paragraph 3.1.3.1 *Design Principles* in this DCP. The height variation is supported, subject to conditions applying to the amended drawings, dated 27.7.23.

4.2.3 Setbacks Controls in LEP Zones B1 and B2

The objectives and requirements of this clause are addressed as follows:

- *To ensure unobstructed access between the private and public domain.*
- *To maintain the existing streetscape of building to the boundary.*

Detailed assessment

- The proposal will maintain consistency with the objectives in this clause to ensure unobstructed access between the private and public domain and maintain continuity in building alignment to the street boundary for South Steyne and Rialto Lane. Detailed consideration of the top storey where setbacks to the front and rear boundary do not align with the building height controls (10m to 12m alignments) is addressed in detail under Clause 4.6 of the WLEP and Clause 3.4.3 of the DCP.

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 design is supported and subject to conditions

4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor

- The objectives and requirements of *Clause 4.2.4 to Clause 4.2.4.3* are considered as follows:
- *To ensure there is adequate provisions for car parking access and loading in future development and redevelopment in all business zones.*
- *To minimise conflicts between pedestrian and vehicular movement systems within the business areas.*

Assessment comment:

- The provisions of this clause allow exceptions to parking rate/ requirements based on merit considerations of landuse, operating hours, multi-use trips, available parking in the CBD, access and conservation values within the CBD. In this case, the applicant has revised the carparking and loading areas in response to Council's Traffic Engineering assessment. A substantial variation to the parking rate is proposed however the applicant has provided a detailed traffic / parking report and included considerations of basement parking, share

vehicles, end-of-trip facilities (change rooms), bicycle access, local CBD parking and land use. In summary, Council's traffic engineer are satisfied with the parking, access and loading arrangements, subject to conditions. (See detailed assessment under the heading "Internal referrals" within this report.

- The proposal includes a new basement area and will therefore increase traffic on the laneway and traffic safety requirements are included to ensure safe access along Rialto Lane. The proposal includes a pedestrian link between the beachfront and Rialto Lane that is clearly identifiable from the public domain and does not create unreasonable conflict between pedestrian and vehicular movement within the business area.

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 design is supported, subject to conditions.

4.2.5.1 Design for Townscape

The site is within the area covered by *Schedule 2 - Map A* of the Manly DCP. In this regard, additional townscape objectives and requirements for Manly Town Centre and Surrounds that apply, are considered as follows:

- *Maintain the predominant pattern of narrow fronted buildings within the town centre with new buildings incorporating modulation of the street wall such as recesses or modulation in the building facade to visually reduce the length and perceived bulk of the street wall.*
- *Maintain existing setbacks. This is considered in terms of sunlight and privacy including spatial separation.*
- *New development to enhance townscape characteristics, disregarding existing unsympathetic buildings, including heritage considerations.*

Assessment Comment:

- The proposal maintains the existing site width of the current building (with use of materiality elements, terrace areas, glazing and other external elements to provide visual interest to wall plane and sympathetic elements (subject to conditions) for the HCA and surrounding built form.
- The proposal is consistent with established setbacks for the ground level, L1 and L2. At the upper level the roof terrace and top storey have been reshaped to accommodate impacts of building bulk (on views) and maintain alignments with adjacent buildings. Design refinements have also included townscape considerations to conceal roof plant / services and integrate the building to the streetscape / laneway areas.
- The proposal seeks completed demolition and new excavation work for basement area and therefore as a new build the styling, materials and floor layouts for each level have been reviewed to address townscape considerations as well as amenity considerations (views, privacy, noise, solar access) for the future building occupancy and adjacent land. Overall the

building maintains consistency with the townscape characteristics of Manly subject to conditions in context with the heritage conservation area. The external colours and materials have been reviewed and other design considerations made to address DSAP review of the proposal to ensure consistency with this objective.

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 design is supported and subject to conditions.

4.2.5.2 Height of Buildings: Consideration of Townscape Principles in determining exceptions to height in LEP Zone B2 in Manly Town Centre

The objectives and requirements of Clause 4.2.5.2 are considered as follows:

- *Whether the final building height including any architectural embellishments adversely dominate the heights of end (corner) buildings in the same street block or that of adjoining buildings.*
- *Whether the proposed development successfully demonstrates the most appropriate relationship to adjoining development in terms of fulfilling the Council's townscape objectives. New development provides opportunities to achieve the maximum height of building in the centre of the street blocks to obtain views and outlook over buildings on the block edge at a lower height.*
- *Whether new development should be constructed to the same building envelope as existing buildings on a site in order to maintain interest and variety, provided the other objectives and requirements (including FSR) of this plan are achieved.*
- *Whether new buildings equate with both the overall height as well as the level of each floor of adjoining buildings and in relation to particular architectural details like parapet details and with particular regard to important end-buildings in the particular street block.*

Assessment comment:

- The site is not in a corner position (cross road or T junction) and does not have an adverse impact on the end (corner) building at the Corso or Wentworth Street intersections with South Steyne. The upper storey is sufficiently stepped back to maintain consistency with No.38 and No.33 South Steyne.
- The proposal will impact views across the site due to the top floor levels (which includes roof space). Some residential apartments within the north east corner of No.11-25 Wentworth Street have views across Rialto Lane and the site, toward the coastline / offshore area. The site however has a 10m (front portion of site) to 12m (rear portion of site) height permissibility and to accommodate view concerns raised during the assessment process, reshaping of the upper storey has been achieved to assist view lines and minimise view loss impacts to apartments overlooking the site. As a result the upper floor area (originally within the 12 height control portion) has been shifted forward, which has increased height non-compliance within the 10m height control portion of the site.
- The proposal maintains compliance with the FSR requirements applicable to the site. The building envelope has been 'paired' with adjacent buildings within the heritage conservation

area in terms of the leading edge of the frontage along South Steyne. Toward the rear the Rialto Lane elevation has been altered during the assessment to extend partly across the right of way with appropriate clearance for delivery trucks to pass under the protruding floor space element.

- The proposed building is not an "end building" for the street block however is within the edge of the HCA and therefore minor design recommendations are recommended to ensure consistency with the objectives of this clause.

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, subject to conditions, is supported.

4.4.3 Signage

Council must not grant development consent for signage unless it is satisfied that that the development is consistent and meets the objectives and assessment criteria of State Environmental Planning Policy (SEPP) No 64 - Advertising and Signage. Schedule 1 of that policy details assessment criteria in the regulation of signage to ensure that it is compatible with the desired amenity and visual character of an area and considered special areas, views and vistas, streetscape, setting or landscape, the site and building, associated devices and logos, illumination and safety.

Assessment Comment:

No signage is proposed as part of the development application. Unless 'exempt' additional development consent will be required for particular signage, subject to future occupancy. Future occupancy (such as fitout if floor changes are required) and may be subject to *Exempt & Complying Development* SEPP or a specific development application.

4.4.4.1 Awnings in LEP B1 and B2 Business Zones

This clause seeks that 'Continuous footpath awnings must be provided on all street frontages generally consistent with the streetscape. The width, fascia height and method of support of all awnings in any street block must be consistent with entrances to public lands and through-site links allowed to be accentuated and generally in accordance with given dimension'.

- The applicant has not proposed a continuous awning and the leading edge is inconsistent with the adjacent awning toward the Corso and within the Heritage Conservation Area. This is not consistent with the DCP and condition is recommended for the leading edge to be adjusted to be consistent / more regular (not necessarily exactly matching given the styling of the proposal). The DCP does not promote increasing irregularities in awning structures (but minor differenced may be suitable) In this case a more appropriate match is warranted given the close proximity to the Corso and very high public activity along the beachfront area.
- A break in the awning is shown toward the southern edge and this is also accentuated by a "keyhole" feature to visualise the through-site link. The break is a relatively small gap and at the outer edge of the HCA with a more irregular building pattern toward the south. Therefore the awning section at the through link is accepted pursuant to the DCP.

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 design is supported, subject to condition.

4.4.5 Earthworks (Excavation and Filling)

The proposal has been submitted with a detailed Geotechnical Investigation Report (#P2474_01) addressing the geological conditions of the site, expected site conditions at sub-ground level and civil engineering precautions to be made for new basement design and building work. Additionally conditions are recommended to ensure compliance with Australian Standards for excavation works including support for neighbouring buildings, dilapidation survey and construction management to minimise risk to surrounding land. Excavations works are also subject to GTA (WaterNSW requirements) and Acid sulfate soils management considerations. Conditions are recommended to address these matters.

Subject to conditions the proposal is consistent with Clause 4.5 Earthworks of the DCP and as detailed under Clause 6.2(3)(a) to (h) of the Manly LEP, as applicable.

5 Special Character Areas and Sites

The objectives and requirements of this clause, including associated clauses 5.1.2 *The Corso* (including Heritage Conservation Area - HCA) and 5.4.1 *Foreshore Scenic Protection area* are considered

- *To identify the characteristics of certain areas and sites in Manly and ensure protection and to develop standards that encourage that protection.*
- *To ensure protection of environmentally sensitive localities.*
- *To encourage a responsible development approach resulting in design of architectural merit that interprets and complements site characteristics, streetscape and the surrounding built and natural environment.*
- *To ensure the scale of development is consistent with the existing and desired character of the residential areas.*

Assessment comment:

- The MDCP states that footpath awnings (solid, horizontal & with lighting) are required, but trafficable balconies and post-supported awnings and balconies are prohibited and considered to be an unnecessary intrusion on the available street space. The proposal has been amended to not include a trafficable overhanging awning area and conditions are included to address continuity between the forward edge appearance as per the MDCP.
- Within the Manly HCA and Corso area, the DCP encourages new shop-fronts should comprise a 'frame' established by masonry ends to read as vertical continuations of the façade above, and by a solid horizontal plinth between the ground and the window sill. The design of the space within this frame can reflect the use of the premises, and utilise contemporary design. For the proposal a contemporary design approach has been used however refinements have been made during the assessment period to better align with this clause of the MDCP. Conditions are also included to address similar considerations for the elevation facing Rialto Lane and for other reasons of privacy, reflection and fenestration.

- The DCP includes consideration that development to the rear of properties fronting The Corso will also have an impact on the character and pedestrian scale of either Market Lane or Rialto Lane that are within the HCA. The design of such new development is to be consistent with the relevant provisions of the *Manly Town Centre Urban Design Guidelines*. Subject to conditions the proposal will allow interaction between the building and the public street (and to provide natural ventilation), windows to upper floors may be openable (and still meet BCA) and balconies are not to be enclosed (placing FSR over the footpath). In consideration of the town centre guidelines, the proposed design has been amended to achieve consistency with this requirement, subject to conditions. As stated above this includes minor revisions to maintain consistency with the DFC including rear elevation treatment facing Rialto Lane, as recommended.
- The DCP seeks that development in the Foreshore Scenic Protection Area must not detrimentally effect the 'visual or aesthetic amenity of land in the foreshore scenic area nor must the development similarly effect the views of that land. Overall the building height and scale is not inconsistent with the foreshore scenic protection area and appropriate materials and colours are to be used. The upper storey FSR has been setback to minimise visual impacts while allowing a terrace area for casual use. Conditions are recommended that the upper terrace not used for food and beverage, and remains for office amenity (open space) for staff within the building, as a commercial premises.

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, 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

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

A monetary contribution of \$110,750 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$11,075,000.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

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

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

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

PLANNING CONCLUSION

This proposal, for demolition and construction of a commercial building with basement area and underground parking has been referred to the NBLPP due to height variation of 4.2m (42%) above the 10m height envelope affecting part of the site for Manly LEP 2013. The Rialto Lane frontage (rear of site) has a 12m height envelope however the proposal complies in part therein or the variation is much less

The concerns raised in the objections have been addressed during the assessment period by (the applicant) redesigning parts of the building layout including the upper storey (Level 3), revising floor layouts and changes to the proposed carparking areas.

The critical assessment issues views, traffic and carparking, streetscape within the heritage

conservation area, facade design (including awnings), residential amenity (during works), building height and construction / traffic management. Council's Traffic engineer is satisfied with the revised parking arrangements for the proposal. Competing view lines have been accommodated by the reshaping of the top floor. Conditions are also recommended for minor facade changes and external roof treatment to address streetscape and amenity considerations for Manly DCP.

Overall, the development is a quality of the design forms satisfactorily against the relevant objective and controls, subject to conditions. The proposal will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment, including the Manly Heritage Conservation Area. 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 MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2022/1164 for Demolition and construction of a commercial building on land at Lot B DP 102407, 34 - 35 South Steyne, MANLY, Lot 2 DP 861591, 34 - 35 South Steyne, MANLY, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A-DA-101-001 Demolition Plan Issue D	20.5.2022	Durbach Block Jagers
A-DA-102-001 Bulk Excavation Plan Issue D	20.5.2022	Durbach Block Jagers
A-DA-110-000 Basement 2 Plan Issue DA-D	9.8.2023 (print)	Durbach Block Jagers
A-DA-110-001 Basement 1 Plan Issue DA-D	9.8.2023 (print)	Durbach Block Jagers
A-DA-110-003 Ground Plan Issue DA-D	9.8.2023 (print)	Durbach Block Jagers
A-DA-110-004 Level 1 Plan Issue DA-D	9.8.2023 (print)	Durbach Block Jagers
A-DA-110-005 Level 2 Plan Issue DA-D	9.8.2023 (print)	Durbach Block Jagers
A-DA-110-006 Level 3 Plan Issue DA-D	9.8.2023 (print)	Durbach Block Jagers

A-DA 110-007 Roof Plan Issue DA-D	9.8.2023 (print)	Durbach Block Jaggers
A-DA-210-001 North & South Elevations issue DA-D	9.8.2023 (print)	Durbach Block Jaggers
A-DA-210-002 East & West Elevations Issue DA-D	9.8.2023 (print)	Durbach Block Jaggers
A-DA-310-001 Sections AA,BB & EE Issue DA-D	9.8.2023 (print)	Durbach Block Jaggers
A-DA-310-002 Sections CC Issue DA-D	9.8.2023 (print)	Durbach Block Jaggers
A-DA-310-003 Section DD Issue DA-D	9.8.2023 (print)	Durbach Block Jaggers
A-DA-810-001 Materials and Finishes (this drawing is subject to conditions)	29.6.2022	Durbach Block Jaggers

Engineering Plans		
Drawing No.	Dated	Prepared By
C-001 P2 Stormwater Management Plan	30.6.2022	Edge
C-101 P2 Sediment and Erosion Control Plan	30.6.2022	Edge
C-301 P2 Ground Stormwater Layout	30.6.2022	Edge
C-302 P2 Basement 2 Stormwater layout	30.6.2022	Edge
C-391 P2 Pre and Post Catchment Plan	30.6.2022	Edge

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
NCC Energy Efficiency (Section J) 1.2	29.6.2022	IGS
Fire Safety Report 222007_FSS_02	5.7.2022	Affinity Fire Engineering
Geotechnical Investigation Report P2474_01 (Including Supplementary Geotechnical Information P2474_05 dated 1.9.2023)	14.3.2022	Morrow
Noise Impact Assessment VE-N22_017	19.6.2022	IGS
Construction Management Plan 1.1	28.6.2022	Lords Group
BCA Compliance Assessment	30.6.2022	Blackett Maguire Goldsmith
Acid Sulphate Soils Assessment 122073	27.6.2022	Geosyntec
Flood Risk Management Report 220553R002	30.6.2022	Edge Consulting

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
DA-01 Site Plan - Landscaping*	27.6.2022	Wyer & Co
DA-02 Soil Depth Plan - Landscaping *	27.6.2022	Wyer & Co
DA-03 Level 1 Landscape Plan*	27.6.2022	Wyer & Co
DA-04 Level 3 Landscape Plan*	27.6.2022	Wyer & Co

*Landscape plans are to be updated to be consistent with the Stamped Architectural Drawings for construction.

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	22.6.2022	DK

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 (Overhead Cables)	4.10.2023
Ausgrid	Ausgrid Referral Response (Underground Cables)	4.10.2023
WaterNSW	Water NSW Referral Response (GTA's)	3.10.2023

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

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

3. **Approved Land Use**

Nothing in this consent shall authorise the use of site/onsite structures/tenancies as detailed on the Stamped Plans for this consent. Any land use of the site beyond the definition of a commercial premises, in accordance with the Dictionary of the Manly Local Environmental Plan 2013, as follows:

commercial premises means any of the following:

- (a) business premises,
- (b) office premises,
- (c) retail premises.

Any variation to the approved land use and/occupancy of any floor level beyond the scope of

the above definition will require the submission to Council of a new development application. Floor area useage is to conform to the location and areas nominated on approved plans.

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

4. No Approval for any Signage

No approval is granted under this Development Consent for signs (as defined under Manly Local Environment Plan 2013 and State Environmental Planning Policy (Transport and Infrastructure) 2021. A separate Development Application for any signs (other than exempt and signs permitted under Complying Development) must be submitted for the approval prior to the erection or display of any such signs.

Reason: Control of signage.

5. No Approval for any Signage above the parapet / roof line

No approval is granted under this Development Consent for the erection of any advertising or business identification signage located above the roof/parapet line.

Reason: Compliance with Warringah Local Environment Plan.

6. 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.

7. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

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

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

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

8. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$110,750.00 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 \$11,075,000.00.

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.

9. **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.

10. **Construction, Excavation and Associated Works Bond (Drainage works)**

The applicant is to lodge a bond of \$2,000 as security against any damage or failure to complete the construction of stormwater drainage works as part of this consent.

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

Reason: Protection of Council's infrastructure.

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

11. **Flooding**

In order to protect property and occupants from flood risk the following is required:

Flood Effects Caused by Development – A2

There is to be no filling of the land or any other reduction of the available flood storage which results in a net loss of storage below the 1% AEP flood level of 5.12m AHD.

Building Components and Structural Soundness – B1

All new development below the Flood Planning Level of 5.12m AHD shall be designed and constructed as flood compatible buildings in accordance with Reducing Vulnerability of Buildings to Flood Damage: Guidance on Building in Flood Prone Areas, Hawkesbury-Nepean Floodplain Management Steering Committee (2006).

Building Components and Structural Soundness – B2

All new development must be designed to ensure structural integrity up to the Flood Planning

Level of 5.12m AHD, taking into account the forces of floodwater, wave action, flowing water with debris, buoyancy and immersion.

Building Components and Structural Soundness – B3

All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level of 5.12m AHD. All existing electrical equipment and power points located below the Flood Planning Level must have residual current devices installed to cut electricity supply during flood events.

Fencing – F1

New fencing (including pool fencing, boundary fencing, balcony balustrades and accessway balustrades) shall be open to allow for the unimpeded movement of flood waters. It must be designed with a minimum of 50% open area from the natural ground level up to the 1% AEP flood level 4.82m AHD. Openings should be a minimum of 75mm x 75mm.

Storage of Goods – G1

Storage areas for hazardous or potentially polluting materials shall not be located below the Flood Planning Level 5.12m AHD unless adequately protected from floodwaters in accordance with industry standards.

Flood gate

Prior to the issue of the Construction Certificate, engineering details of the design, construction and maintenance of the flood gate are to be submitted to the Principal Certifier for approval and shall include installation details, the calibration of the structure and the ongoing maintenance regime, together with periodic compliance reports from an appropriate engineer.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

12. Stormwater Disposal

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

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.

13. Erosion and Sediment Control Plan

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the

requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:

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

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

Reason: Protection of the receiving environment.

14. **Construction Traffic Management Plan**

As a result of the site constraints, limited vehicle access and parking, a *Construction Traffic Management Plan* (CTMP) and report shall be prepared by an RMS accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate.

Due to heavy traffic congestion throughout the town centre, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm. Truck movements must be agreed with Council's Traffic and Development Engineer prior to submission of the CTMP.

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
- 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.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

15. Mechanical Car Stacker

The applicant is to provide information on the proposed mechanical car stacker, operation details, maintenance plan and contingency plan during a malfunction.

Details are to be provided to Council for approval

Details demonstrating compliance are to be reflected on the Construction Certificate plans and any supporting documentation for the endorsement of the Certifying Authority prior to the release of the Construction Certificate.

Reason: To ensure ongoing access to parking spaces

16. Amendments to the Approved Plans - South Steyne elevation

The following amendments are to be made to the plans for the construction certificate stage:

- i) The front awning vertical edge (above Council's road & kerb line) fronting South Steyne (north of the pedestrian walk-through) is to match the front vertical edge width / shape of the awning at No.36-38 South Steyne for consistency within the Manly DCP and heritage conservation area.
- iii) The roof planting structures on the main street awning span (above Council's sidewalk / road reserve) is limited to protecting a maximum 1.0 metre (m) forward from the property boundary. If natural plants are to be used on the street awning, the internal planter box depth (for soil) is to be limited to a maximum of 600 millimetres to limit bulky structures on awnings within the heritage conservation area.

Details are to be provided to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate.

Reason: To satisfy streetscape objectives of the Manly DCP 2013 within the Heritage Conservation Area.

17. 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.

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.

18. Services and Fire Hydrant Enclosure

Prior to the issue of a Construction Certificate for works above ground slab level, the Certifying Authority is to be provided with plans demonstrating that all Services (Gas meter, water meter & fire hydrant and sprinkler booster valves and the like) are enclosed in a manner that complies the building and in accordance with the requirements of EP1.3 & EP1.4 of the BCA.

Reason: To ensure essential services are appropriately screened.

19. Building Code of Australia Fire Safety Requirements

The Building Code of Australia fire safety measures for the building as detailed and recommended in the BCA Compliance Statement Report by Blackett, Maguire + Goldsmith dated 30/6/2022, including any Performance Solutions are to be considered as part of the assessment of the Construction Certificate. Details demonstrating compliance are to be provided to the Certifying Authority, prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for Health, Amenity, access and Fire safety for building occupant health and safety.

20. Building Code of Australia Access

Access and facilities to and within the building are to be provided for Persons with a Disability.

In this regard the recommendations contained in the Access Report prepared by Code Performance dated June 2022, Ref. 22223-R1.2, is to be taken into consideration as part of the assessment of the Construction Certificate. Details are to be provided to the Certifying Authority prior to the issue of the Construction Certificate and be implemented prior to occupation of the building.

Reason: To ensure adequate provision is made for access to and within the building for Persons with a disability.

21. **Vehicle Driveway Gradients**

The Applicant is to ensure driveway gradients within the private property are not to exceed a gradient of 1 in 4 (25%) with a transition gradient in accordance with AS2890.1 prior to a level parking facility.

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

Reason: To ensure suitable vehicular access to private property.

22. **Tanking of Basement Level**

The basement area is to be permanently tanked. The Applicant is to submit structural details of the tanking, prepared by a suitably qualified Engineer. Where temporary dewatering works are required on the development site during construction, the developer/applicant must apply for and obtain a bore license from the NSW Office of Environment and Heritage. The bore license must be obtained prior to commencement of dewatering works. All requirements of the NSW Office of Water are to be complied with and a copy of the approval must be submitted to the Certifying Authority. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To prevent ingress of sub-surface flows into the basement area and to comply with State Government Requirements.

23. **Dewatering for construction management**

Additional geotechnical investigation are required to confirm the need for a construction dewatering approval/licence from WaterNSW.

The geotechnical investigation report shall be submitted to the Principal Certifier prior to the release of the Construction Certificate.

Reason: Protection of the receiving environment and groundwater resources.

24. **Stormwater Drainage Application**

The applicant is to provide a stormwater drainage application under Section 68 of the Local Government Act 1993 to Council for approval. The submission is to include four (4) copies of Civil Engineering plans for the design of the connection to the Council inlet pit in Rialto Lane which are to be generally in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1. The form can be found on Council's website at www.northernbeaches.nsw.gov.au > Council Forms > Stormwater Drainage Application Form.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fees and Charges. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for disposal and maintenance stormwater management and compliance with the BASIX requirements, arising from the development.

25. Acoustic Report Recommendations

Prior to the issuing of any Construction Certificate, documentation is to be submitted to the satisfaction of the Principal Certifying Authority that recommendations within the acoustic report by IGS referenced as VE-N22_017 and dated 29 June 2022 have been implemented/incorporated into the design of the premises.

Reason: To protect acoustic amenity of building occupants and surrounding premises.

26. 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.

27. External Finishes to Roof

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

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development. (DACPLC03)

28. Amendments to the Approved Plans - Rialto Lane elevation

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

i) Window glazing below Level 3 is to include treatment, including louvres or similar facade treatment, to reduce solar reflection and provide to address privacy / overlooking and include thermal shading.

ii) A minimum of three (3) awning style windows (top hinged) are to be included for Level 1 and Level 2, fronting Rialto Lane to enhance cross ventilation options for the building.

iii) Revision to the window glazing is to include traditional framing elements appropriate to the Manly Townscape principles of the Heritage Conservation Area (HCA) and styling to enhance the heritage conservation values surrounding The Corso and Rialto Lane.

Details are to be provided to the satisfaction of the *Executive Manager of Development Assessment* prior to the issue of a Construction Certificate. The Construction Certificate is to be amended to incorporate the design inclusions.

Reason: Specialist requirements for Townscape, Design Excellence and Heritage considerations within the Manly HCA.

29. Waste and Recycling Requirements

Details demonstrating compliance with Northern Beaches Waste Management Guidelines, are to be submitted to and approved by the Certifying Authority prior to the issue of any Construction Certificate.

Note: If the proposal, when compliant with the Northern Beaches Waste Management Guidelines, causes inconsistencies with other parts of the approval i.e. architectural or landscaped plans, a modification(s) to the development may be required.

Reason: To ensure adequate and appropriate waste and recycling facilities are provided.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

30. Work Zones and Permits

Prior to commencement of the associated works, the applicant shall obtain a Work Zone Permit where it is proposed to reserve an area of road pavement for the parking of vehicles associated with a construction site.

A separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane

Reason: To ensure Work zones are monitored and installed correctly.

31. Demolition Traffic Management Plan

As a result of the site constraints, limited vehicle access and parking, a Demolition Traffic Management Plan (DTMP) shall be prepared by an suitably accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to commencing any demolition work.

Due to heavy traffic congestion throughout the area, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm.

The DTMP must:-

- Make provision for all construction materials to be stored on site, at all times.
- The DTMP is to be adhered to at all times during the project.
- Specify construction truck routes and truck rates. Nominated truck routes are to be distributed over the surrounding road network where possible.
- Provide for the movement of trucks to and from the site, and deliveries to the site. Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site is not permitted unless prior approval is granted by Council's Traffic Engineers.
- Include a Traffic Control Plan prepared by an RMS accredited traffic controller for any activities involving the management of vehicle and pedestrian traffic.
- Specify that a minimum fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measures.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes, structures proposed on the footpath areas (hoardings,

scaffolding or temporary shoring) and extent of 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 DTMP 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. These communications must be documented and submitted to Council prior to work commencing on site.
- Specify spoil management process and facilities to be used on site.
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of demolition. At the direction of Council, the applicant is to undertake remedial treatments such as patching at no cost to Council.

The DTMP 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 Demolition Traffic Management Plan is submitted.

Reason: This condition is to ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems. The DTMP is intended to minimise impact of construction activities on the surrounding community, in terms of vehicle traffic (including traffic flow and parking) and pedestrian amenity adjacent to the site.

32. **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:

- No.33 South Steyne, Manly
- No.36-38 South Steyne, Manly
- No.94-100 The Corso, Manly
- No.92 The Corso, Manly
- No.25 Wentworth Street, Manly (in so far as works are in close proximity)
- Any other adjacent private or public assets in close proximity that may be at risk of damage impact / dilapidation during works.

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.

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.

33. **Demolition Works Plan**

A Demolition Works Plan is to be prepared prior to the commencement of works and shall be implemented by the applicant / site work contractors to minimise amenity disruption to surrounding properties, including the public domain adjacent.

Measures to address are to include, but are not limited to:

- Notification and communication contact with surrounding properties (to inform / advise) prior to commencement, and at critical stages of demolition / site preparation.
- Heavy vehicle access and extended excavation / demolition work / piling timings.
- Expected duration of high noise periods (e.g. jackhammering, heavy equipment use)
- Safety measures to be used to protect adjacent property and pedestrian movement.
- Other relevant matters, including compliance with OHS/ Australian Standards.

Reason: Residential amenity and safety

DURING BUILDING WORK

34. **Unrecorded Sites of Significance**

Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office contacted to assess the finds.

Under Section 89a of the NPW Act should the objects be found to be Aboriginal, NSW Biodiversity and Conservation Division, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

Reason: Preservation of significant environmental features.

35. **Tree and Vegetation Protection**

- a) Existing trees and vegetation shall be retained and protected including:
 - i) all trees and vegetation located on adjoining properties,
 - ii) all road reserve trees and vegetation.
- b) Tree protection shall be undertaken as follows:
 - i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites including the provision of temporary fencing to protect existing trees within 5 metres of development,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
 - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,

- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- viii) any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
- ix) the activities listed in section 4.2 of Australian Standard 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 Australian Standard 4373-2007 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 Certifying Authority must ensure that:

- c) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites do not occur within the tree protection zone of any tree and any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained on the site during the construction is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

Note: All street trees within the road verge and trees within private property are protected under Northern Beaches Council development control plans except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking or removal of any tree(s) is prohibited.

Reason: Tree and vegetation protection.

36. 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.

37. **Dewatering Management**

A permit from Council is required prior to any dewatering of the site.

The construction certificate approved geotechnical report and proposed dewatering management plan are to be submitted to Council for assessment prior the release of Council dewatering permit.

The groundwater/tailwater to be discharged must be compliant with the General Terms of Approval/Controlled Activity permit issued by WaterNSW (if applicable), Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) (Blue Book), Council's Compliance and Enforcement Policy and legislation including Protection of the Environment Operations Act 1997 and Contaminated Lands Act 1997.

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

Reason: Protection of the receiving environment and groundwater resources.

38. **Implementation of Demolition Traffic Management Plan**

All works and demolition activities are to be undertaken in accordance with the approved *Demolition Traffic Management Plan* (DTMP). All controls in the DTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the DTMP be impacted by surrounding major development not encompassed in the approved DTMP, the DTMP measures and controls are to be revised accordingly and submitted to Council for approval.

A copy of the approved DTMP is to be kept onsite at all times and made available to the accredited certifier or Council on request.

Reason: To ensure compliance and Council's ability to modify the approved Construction Traffic Management Plan where it is deemed unsuitable during the course of the project.

39. **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 RMS 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.

40. **Ongoing Management**

The applicant shall be responsible in ensuring that the road reserve remains in a serviceable state during the course of the demolition and building works.

Reason: To ensure public safety.

41. **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.

42. **Acid Sulfate Soil**

Any new information revealed during excavation works that has the potential to alter previous conclusions about *Acid Sulfate Soils* shall be immediately notified to the Council and the Principal Certifying Authority prior to further commencement.

Reason: The protect the environment.

43. **Amenity during works - Mitigation measures**

Community notification is to take place at least seven (7) days before demolition or excavation and all-day concrete pours commences; notification advice to any likely affected residential or commercial neighbors shall be given.

The affected neighbours shall be supplied with a 24-phone contact number and email address for any enquiries or complaints. Concrete Pumps, generators and similar mechanical equipment shall be acoustically attenuated where the technology is available to reduce noise impact on neighboring businesses and residents.

The *Construction Management Plan* shall being amended to incorporate that all heavy vehicles are not to queue in Rialto line with engines idling while not in use and must remain off site until required.

Reason: To minimise the disturbance to the amenity of neighbours

44. **Waste/Recycling Requirements (Waste Plan Submitted)**

During demolition and/or construction the proposal/works shall be generally consistent with the submitted Waste Management Plan titled dated [INSERT].

Reason: To ensure waste is minimised and adequate and appropriate waste and recycling facilities are provided.

45. **Waste/Recycling Requirements (Materials)**

During demolition and/or construction the following materials are to be separated for recycling: timber, bricks, tiles, plasterboard, metal, concrete, and evidence of disposal for recycling is to be retained on site.

Reason: To ensure waste is minimised and recovered for recycling where possible.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE**46. Landscape Completion**

a) Landscaping is to be implemented in accordance with the approved Landscape Plan.

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

Reason: Environmental amenity.

47. Restriction as to User and Positive Covenant over the self-actuating flood gate

A restriction as to user shall be created on the title over the self-actuating flood gate in order to:

1. Prohibit the removal or modification of the self-actuating flood gate.
2. The flood protection offered by the self-actuating flood gate must be continuous and at a minimum level of 5.12m AHD. Such levels are to be detailed to Australian Height Datum on the Section 88B instrument and submitted to Council for approval.

Northern Beaches Council shall be nominated as the sole authority empowered to release, vary or modify such restriction.

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood prone property and reduce public and private losses in accordance with Council and NSW Government policy.

48. Stormwater Disposal

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified Civil Engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

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

49. Basement Garage Traffic Signal System

To prevent conflicting vehicle flows on the internal basement garage ramp and avoid vehicles having to reverse up/ down the ramp, a traffic signal system must be installed on Rialto Lane to control entry to the carpark ramp, the signal designed to warn drivers about to enter the ramp of any conflicting vehicle using the ramp.

The signal system must;

- be clearly visible from Rialto Lane for vehicles about to enter the ramp,
- is to clearly indicate to an approaching driver, by way of red light or wording, that an opposing vehicle has entered the ramp,

Details of the system, including the system operation, components and placement within the development, must be specified by a practising Traffic Engineer. This engineer is to submit a compliance certificate to the Principal Certifying Authority that the system has been installed and operating as designed, in accordance with the requirements of this condition, prior to the issue of any Occupation Certificate issued for the development.

Reason: To ensure no vehicle conflicts within the basement carpark.

50. **Disabled Parking Spaces**

Where disabled parking spaces are provided they must be in accordance with AS2890.6:2009.

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

Reason: To ensure compliance with Australian Standards.

51. **Operational Management Plan**

An Operational Management Plan (OMP) is required to be prepared and submitted to Council detailing the operation of the development. The OMP shall include, but not be limited to the following:

- Vehicle access and egress.
- Through-site circulation of vehicle movements.
- Management of car parking areas in particular the 2 x carpool spaces.
- The location and content of directional signage.
- Complaints management.
- Noise management.
- Truck delivery times and methods of control to manage access to the loading bay and avoid conflict with waste collection.
- Waste management.

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

Reason: To ensure that the development operates with minimum disruption to the surrounding area.

52. **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.

53. **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.

54. **Site Consolidation**

Lot 2 DP 861591 and Lot B DP 102407 shall be consolidated and all rights of way / encumbrances transferred to the new consolidated Lot for the development site.

Details demonstrating that the consolidated Lot has been registered with the NSW Land Titles Office are to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: Orderly development of land.

55. **Positive Covenant for the Maintenance of Stormwater Pump-out Facilities**

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), hydraulic engineers' certification.

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance of the pump-out facility on the property being developed. Northern Beaches Council shall be nominated in the instrument as the only party authorised to release, vary or modify the instrument. Northern Beaches Council's delegate shall sign these documents prior to the submission to the NSW Land Registry Services. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the final Occupation Certificate.

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 Certifying Authority prior to the issue of final Occupation Certificate.

Reason: To ensure adequate provision is made for the stormwater pump out system to be maintained to an appropriate operational standard.

56. **Acoustic Report Certification**

Prior to any occupation certificate being issued, a further acoustic assessment is to be undertaken by a qualified and experienced person(s) to confirm compliance with the acoustic assessment by IGS referenced as VE-N22_017 and dated 29 June 2022.

Any recommendations made by the consultant must be implemented prior to issuing the Occupation Certificate in order to achieve compliance with noted conditions of this consent.

Reason: To verify acoustic compliance.

57. **Garbage and Recycling Facilities**

All internal walls of the waste rooms shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.
Waste room floors shall be graded and drained to an approved Sydney Water drainage system.

Waste rooms shall be clear of any other services or utilities infrastructure such as gas, electricity air-conditioning, plumbing, piping ducting or equipment.

Reason: To prevent pollution of the environment, provide a safe workplace for contractors and residents and to protect the amenity of the area.

58. **House / Building Number**

The street building number is to be affixed to the building to be readily visible from the public domain.
(Note: A font height of between 20cm to 30cm is suitable near or above the main pedestrian entry point)

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

Reason: Proper identification of buildings.

59. **Waste and Recycling Facilities Certificate of Compliance**

The proposal shall be constructed in accordance with the Northern Beaches Waste Management Guidelines.

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

Reason: To ensure waste and recycling facilities are provided.

60. **Waste/Recycling Compliance Documentation**

Evidence of disposal for recycling from the construction/demolition works shall be submitted to the Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure waste is minimised and recycled.

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

61. **Vehicle Parking and Loading**

- The car parking area shown on the approved drawings must be used for vehicle parking only (not obstructed by other fixtures / miscellaneous items). Thirteen (13) car spaces (marked) are to be provided as shown (including those for EV/ share car / disabled access / car stacker)
- One (1) Loading and unloading dock (marked) for vehicles and delivery of goods to the land must be provided as shown and kept available for such use.

Reason: To ensure the safety and amenity of the general public using public streets

62. Staff and Contractor Parking

The applicant is to make provision for parking for all construction staff and contractors for the duration of the project. All Staff and Contractors are to use the basement parking once available. All necessary facilities are to be provided to accommodate this requirement including lighting in the basement, security cameras, etc.

Reason: To ensure minimum impact of construction activity on local parking amenity.

63. Roof areas, Terraces and Roof planting

The following provisions apply:

- i) Rooftop planting at the rear of Level 3 is to be maintained to a height not exceeding 0.3m above the parapet (planter box) edge.
- ii) The Level 3 front roof terrace is not to be used for commercial food and beverage purposes.
- iii) Solar voltaic cells are not to be placed on Level 3 roof top or the rear landscaped roof space toward Rialto Lane.
- iv) The main upper roof surface of Level 3 is minimise reflectivity to overlooking apartments. (White, light grey or similar colours are not to be used for finished roof treatment)

Reason: To ensure that the development remains consistent with Manly DCP townscape.

64. Commercial Waste Collection Procedure

Commercial waste and recycling bins are not to be placed at the kerbside on Rialto Lane awaiting

collection.

Waste collection arrangements must include a procedure whereby the collection contractor enters the

property with a vehicle to service the bins from the dedicated bin storage area and then returns to the bins to the

dedicated bin storage area immediately after emptying.

Reason: To maintain the public amenity of Rialto Lane.

65. Future use Food Premises

The final use of the commercial tenancies for Food Premises shall not be approved until such times as a Development Application is lodged with Council.

The application shall make reference to, but not be limited to :

- Noise implications (plant ,equipment, motors exhaust , customer noise, internal building vibration, hours of operation)
- Any fumes/smoke/odour
- Compliance with :
Australian Standard 4764-2004 (Design, Construction and Fit-out of a Food Premises),
Australian Standard 1668.2-2012 (Mechanical Ventilation in Buildings),
Food Safety Standard 3.2.2 (Food Safety Practices and General Requirements), and
Food Safety Standard 3.2.3 (Food Premises and Equipment).

Reason: To ensure any food premises will comply with Legislation and Standards

66. **Commercial Uses**

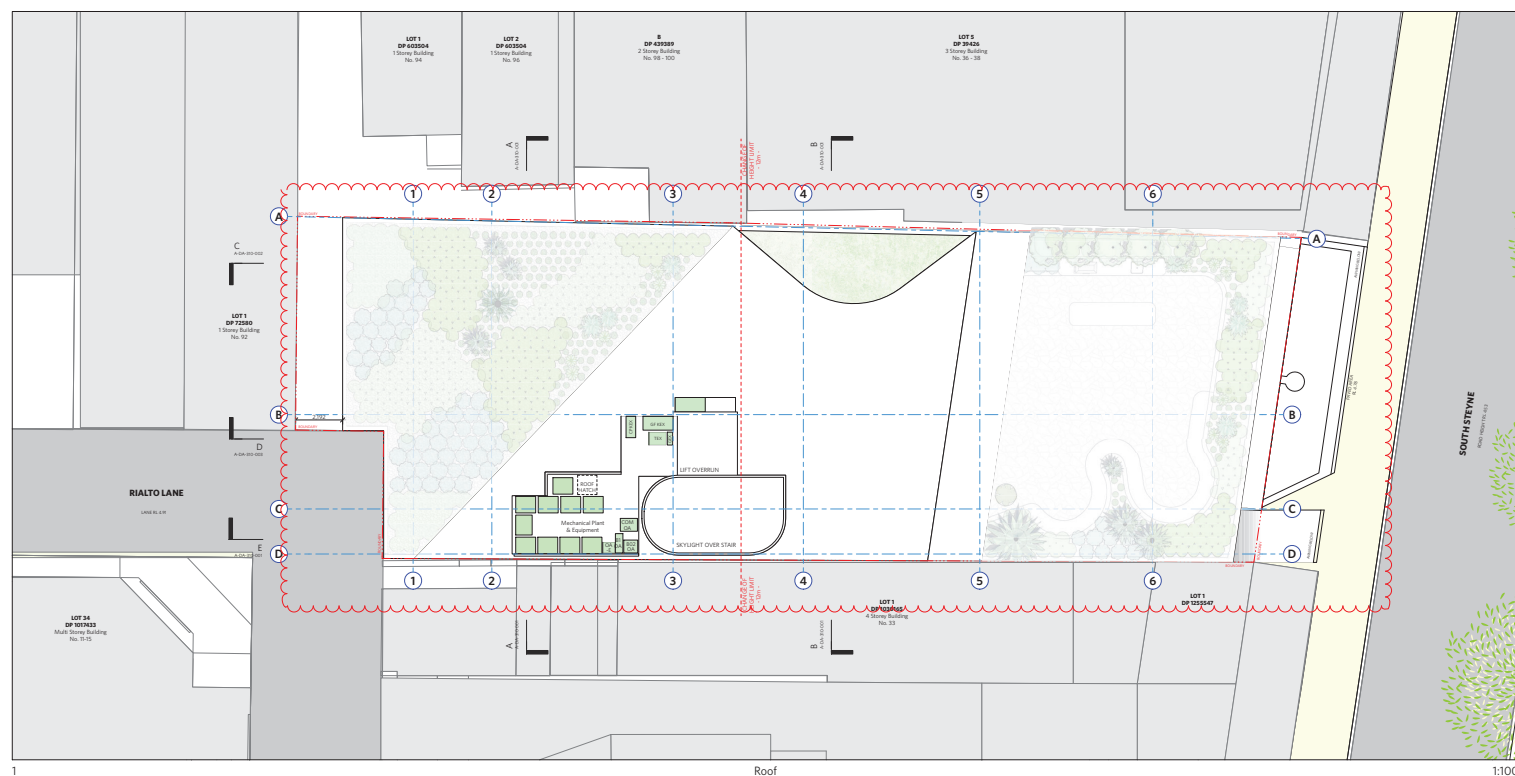
No consent is granted for commercial use as part of this consent. A separate development application shall be lodged for future occupation of the commercial uses.

Reason: Information to ensure that amenity of the surrounding locality is maintained.

67. **Parking Permits**

Any businesses and/or tenants of the subject site are not eligible for business parking permits. This condition is to be provided on the property Title.

Reason: to ensure businesses premises/tenants are aware that they are not entitled to permits irrespective of the location of the development within a permit parking area



NOTES

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Nominated Architect Neil Durbach
NSW Reg. No 5850

LEGEND	
AC	AIR CONDITIONING
ES	ELECTRICAL SWITCHBOARD
FR	FIRE HYDRANT
FH	FIRE HOSE REEL
HP	FIRE INDICATOR PANEL
DP	DOWNPIPE
OF	OVERFLOW
RO	ROLLER DOOR
DRP	DRAINAGE POINT
FG	FIXED GLAZING
LO	LOUVERES (OPERABLE)
GA	GATE
SW	SLIDING WINDOW
OW	OPENABLE WINDOW
RF	RENDERED FINISH
MF	MOSAIC TILED FINISH
MR	MECHANICAL/ELECTRICAL RISER
HR	HYDRAULIC RISER
FR	FINISHED RL
STR	STRUCTURAL RL
HS	HOSETAP
GS	GAS POINT

ISSUE STATUS		
REV	DESCRIPTION	DATE
A	ISSUE TO CLIENT FOR REVIEW	22/4/2
B	ISSUE FOR INFORMATION	22/5/0
C	ISSUE TO CONSULTANTS	22/5/1
D	ISSUE FOR INFORMATION	22/5/2
DA	ISSUE FOR DA	22/6/2
DA-A	REVISED ISSUE FOR COORDINATION - DA BFI AMENDMENTS	23/7/1
DA-B	REVISED SUBMISSION FOR DA	23/9/2
DA-O	REVISED DA SUBMISSION - BFI AMENDMENTS	30/7/2

CLIENT	Fortis Development Group
JOB	1728 Fortis South Steyne 34-35 South Steyne Manly NSW

ARCHITECT

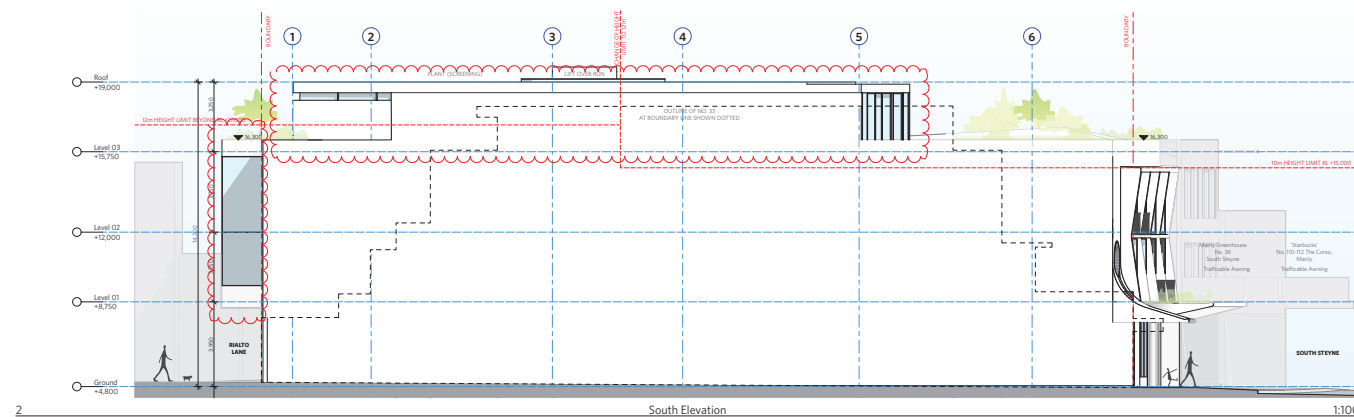
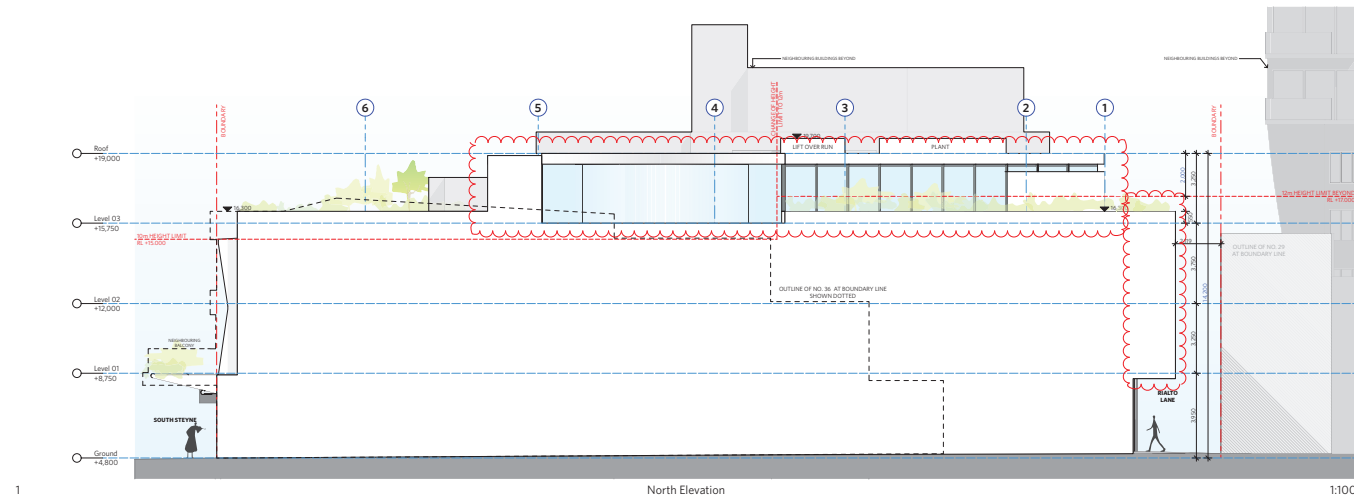
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DRAWN	CHECKED	DATE DRAWN	PRINTED
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SCALE 1:100 @ A1 / 1:200 @ A3			
			

TITLE
GA Plans
Roof Plan

PROJECT NO.	ISSUE	REV.
1728	DA	DA-
DRAWING NO.		
A-DA-110-007		



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LEGEND
AC AIR CONDITIONING
E ELECTRICAL SWITCHBOARD
FH FIRE HYDRANT
FHR FIRE HOSE REEL
FP FIRE PREVENTION PANEL
OP OVERFLOW
OF OVERFLOW
RPS ROLLER DOOR
DPP DRAINAGE POINT
FD FLOODING
LD LOUVER (OPERABLE)
CA CASE
SW SLIDING WINDOW
OW OPENING WINDOW
M MOSAIC TILE FINISH
H HYDRAULIC RISER
HRS HYDRAULIC RISER
V VENTILATION
G GAS POINT

ISSUE	DESCRIPTION	DATE
1	ISSUE TO CLIENT FOR REVIEW	20/01/22
2	ISSUE TO CLIENT FOR REVIEW	20/01/22
3	ISSUE TO CLIENT FOR REVIEW	20/01/22
4	ISSUE TO CLIENT FOR REVIEW	20/01/22
5	ISSUE TO CLIENT FOR REVIEW	20/01/22
6	ISSUE TO CLIENT FOR REVIEW	20/01/22
7	ISSUE TO CLIENT FOR REVIEW	20/01/22
8	ISSUE TO CLIENT FOR REVIEW	20/01/22
9	ISSUE TO CLIENT FOR REVIEW	20/01/22
10	ISSUE TO CLIENT FOR REVIEW	20/01/22

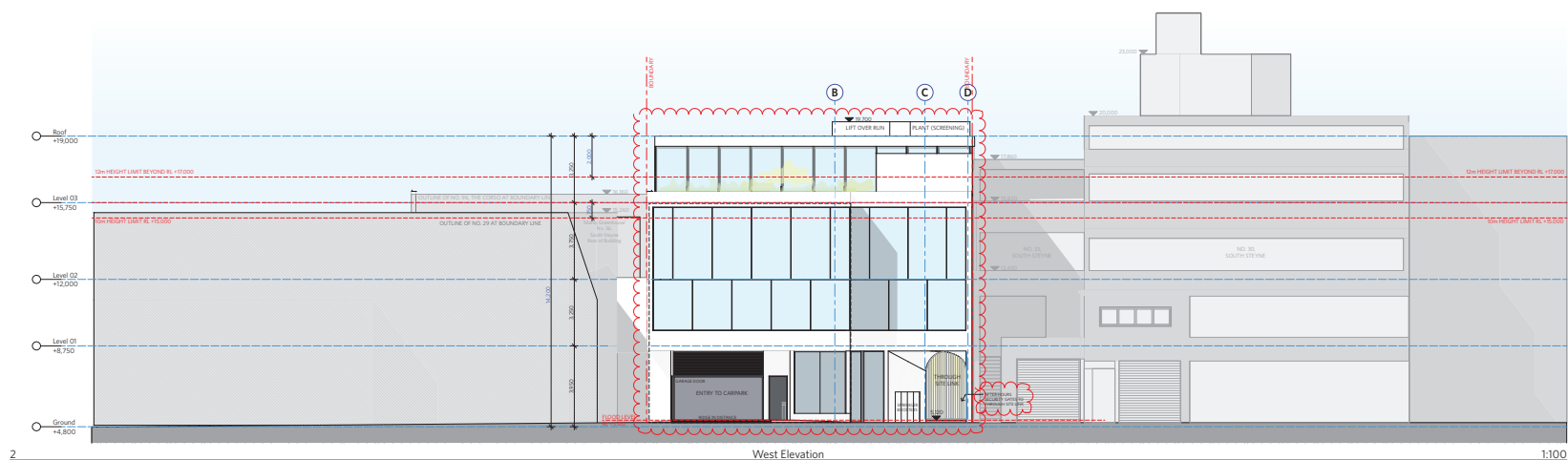
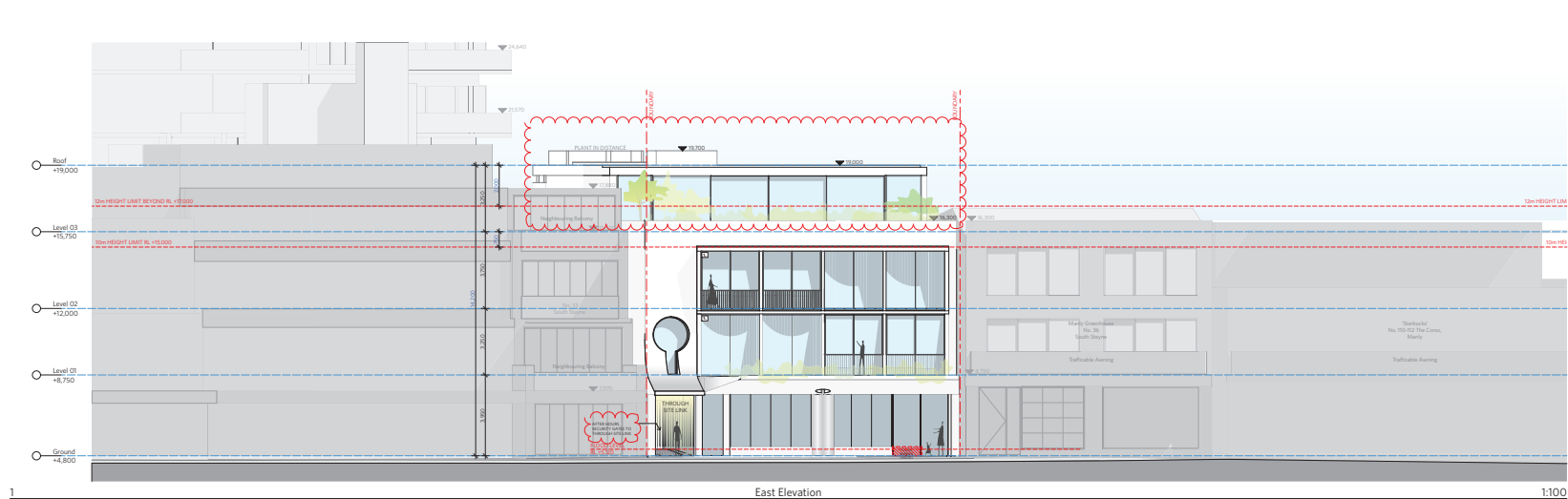
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Roxa Development Group
1728 Fortis South Stays
34-35 South Stays Mainly NSW

ARCHITECT
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NO.	REVISION	DATE	BY
1	1	30/12/22	DA-D

TITLE
GA Elevation
North & South Elevations

PROJECT NO.
1728
FILE NO.
DA-D
PROJECT NO.
A-DA-210-001



NOTES

DO NOT SCALE OF DRAWINGS

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Nominated Architect Neil Durbach
NSW Reg. No 5850

LEGEND	
AC	AIR CONDITIONING
E	ELECTRICAL SWITCHBOARD
FH	FIRE HYDRANT
FHR	FIRE HOSE REEL
FIP	FIRE INDICATOR PANEL
DF	DOWNPIPE
OF	OVERFLOW
RD	ROLLER DOOR
DPO	DRAINAGE POINT
FG	FIXED GLAZING
LD	LOUNGE (OPERABLE)
GA	GATE
SW	SLIDING WINDOW
OW	OPENABLE WINDOW
RF	RENDERED FINISH
MF	MOSAIC TILED FINISH
MR	METALLIC MECHANICAL RISER
HR	HYDRAULIC RISER
▼	FINISHED RL
▼	STRUCTURAL RL
▼	HOSETAP

NOTES:

1. FACADE WASHING SYSTEM
LOCATED IN THE SOFFIT OF EACH
OF THE 8 GLAZED EASTERN
FACADE WINDOW BAYS ON LEVEL
1 & 2.

ISSUE STATUS		
REV	DESCRIPTION	DATE
A	ISSUE TO CLIENT FOR REVIEW	22/11/17
B	ISSUE FOR INFORMATION	22/11/17
C	ISSUE TO CONSULTANTS	22/11/17
D	ISSUE FOR INFORMATION	22/11/17
DA	ISSUE FOR DA	22/11/17
DA-A	REVISED ISSUE FOR COORDINATION - DA RFI AMENDMENTS	23/11/17
DA-B	REVISED SUBMISSION FOR DA	23/11/17
DA-C	REVISED DA SUBMISSION - RFI AMENDMENTS	30/11/17

CLIENT Fortis Development Group
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DRAWN	CHECKED	DATE DRAWN	PRINTED
ND	DJ	31/7/27	19/8/20 2:46 pm
SCALE			
1:100 @ A1 / 1:200 @ A3			

TITLE
GA Elevation
East & West Elevation

PROJECT NO.	ISSUE	REV.
1728	DA	DA
DRAWING NO.		
A-DA-210-002		



STATEMENT OF ENVIRONMENTAL EFFECTS

Proposed Commercial
Building

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Manly

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Statement of Environmental Effects

Proposed Commercial Building



34 - 35 South Steyne, Manly

Greg Boston

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July 2022



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ANNEXURE 1 – CLAUSE 4.6 REQUEST – BUILDING HEIGHT



1 Introduction

This Statement of Environmental Effects (SEE) has been prepared on behalf of Fortis Development Group in support of a development application proposing the demolition of the existing structures and the construction of a multistorey commercial building at 34-35 South Steyne, Manly. The application also includes basement parking, a swimming pool, the implementation of an integrated site landscape regime, all associated infrastructure and a through-site link between Rialto Lane and South Steyne.

Durbach Block Jagers, the project architects, have responded to the client brief to design a contextually responsive building of exceptional quality with high levels of amenity for future occupants of the commercial spaces. In this regard, the scheme has been developed through detailed site and contextual analysis to identify the constraints and opportunities associated with the development of this site having regard to the height, scale, proximity, use and orientation of surrounding development and the flood affectation of the land.

In addition to this SEE, the application is also accompanied by the following:

- Architectural Plans by Durbach Block Jagers
- Survey by Hill & Blume Consulting Surveyors
- Landscape Plans by Wyer & Co
- Traffic and Parking Assessment Report by Varga Traffic Planning Pty Ltd
- Flood Report by Edge Consulting Engineers
- Access Report by Code Performance Pty Ltd
- BCA Compliance Report by Blackett Maguire & Goldsmith
- Acoustic Report by Integrated Group Services
- Stormwater Management Plans by Edge Consulting Engineers
- Structural Support Letter by M & G Consulting Engineers Pty Ltd
- Geotechnical Report by Morrow Geotechnics Pty Ltd
- Acid Sulfate Soils Assessment by Geosyntec Consultants Pty Ltd
- Quantity Surveyors Report by Newton Fisher Group
- Section J – JV3 Assessment Report by Integrated Group Services
- Heritage Impact Statement by Weir Phillips
- Construction Management Plan by Lords Group
- Waste Management Plan by Dickens Solutions
- Fire Safety Strategy by Affinity Fire Engineering



In preparation of this document, consideration has been given to the following:

- Environmental Planning and Assessment Act 1979 (**EP&A Act**),
- Manly Local Environmental Plan 2013 (**MLEP 2013**),
- Manly Development Control Plan 2013 (**MDCP 2013**),
- State Environmental Planning Policy (Resilience and Hazards) 2021,

The proposal succeeds when assessed against the Heads of Consideration pursuant to section 4.15(1) of the EP&A Act. It is considered that the application, the subject of this document, is appropriate on merit and is worthy of the granting of development consent for the following reasons:

- The accompanying plans depict a high quality and contextually appropriate built form outcome that responds to adjacent and nearby development and the surrounding environment. The proposed development is a suitable design solution in light of the zoning of the land and the context of the site.
- The apparent height and bulk of the proposed development is compatible with that of surrounding development, and consistent with the desired future character of the locality.
- Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191, we have formed the considered opinion that most observers would not find the apparent size of the proposed development offensive, jarring or unsympathetic in the streetscape context.
- Whilst the proposal requires the consent authority to give favourable consideration to a variation to the building height development standard, strict compliance has been found to be unreasonable and unnecessary in this instance as the development is otherwise consistent with the objectives of the development standard and sufficient environmental planning grounds exist to support the variation (as outlined in the attached Clause 4.6 Variation Request).
- The non-compliance with the car parking requirements prescribed by MDCP 2013 has been acknowledged and appropriately justified having regard to the associated objectives. Such variation succeeds pursuant to section 4.15(3A)(b) of the EP&A Act which requires Council to be flexible in applying such provisions and allow reasonable alternative solutions that achieve the objects of DCP standards for dealing with that aspect of the development.
- The proposal will provide a notable increase to the supply of commercial floor space on a site ideally suited to an appropriate mix of business, office and retail premises.
- The proposed development has been amended in response to the feedback from Council's Design and Sustainability Advisory Panel (DSAP) provided at the DSAP meeting on 26 May 2022 and in the subsequent minutes provided.

2 Site Analysis

2.1 Site Description and location

2.1.1 The Site

The site is comprised of the following land holdings:

- Lot 2 in DP 861591 (34 South Steyne, Manly)
- Lot B in DP 102407 (35 South Steyne, Manly)

The consolidated site is highlighted in the aerial image in Figure 1 below.

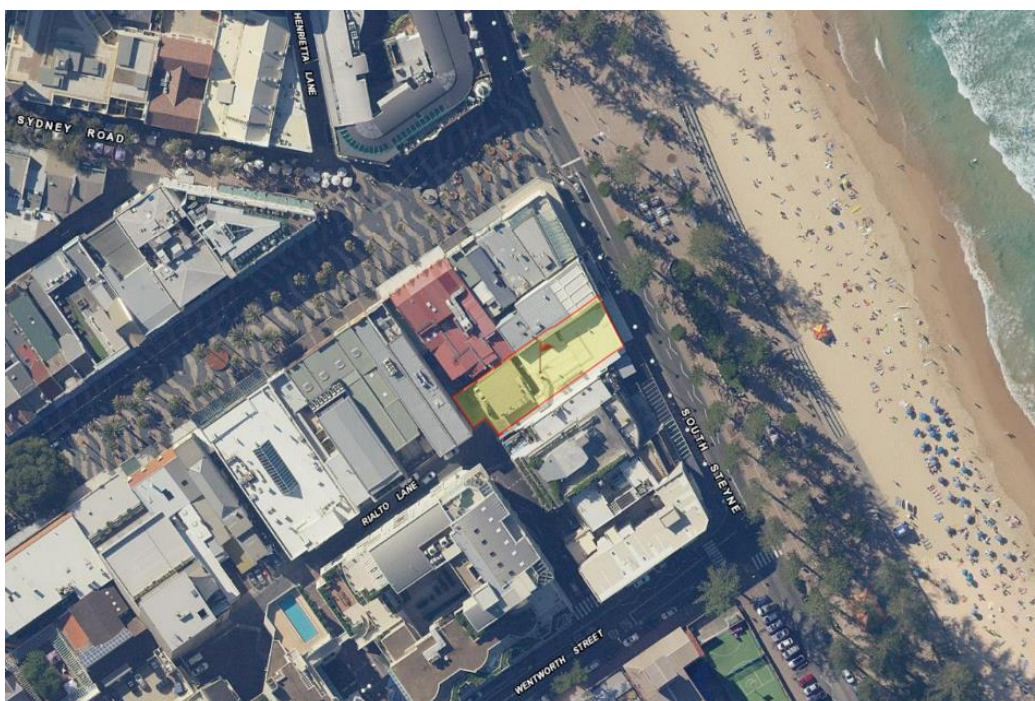


Figure 1: Aerial photograph of the site
Source: Six Maps

The site is irregularly shaped, with a 15.305m wide frontage to South Steyne to the north-east, a maximum depth of 46.815m and a total area of 690.2m². The site has a secondary frontage to Rialto Lane at the rear. The site is generally level and is partially affected by flooding.

A two storey commercial building currently occupies the site, with at-grade parking at the rear. The site is burdened by a 3.0m wide right of carriageway that runs parallel along the south-western boundary.

The physical and topographical characteristics of the site are depicted on the site survey extract at Figure 2, and the site images at Figures 3 and 4.

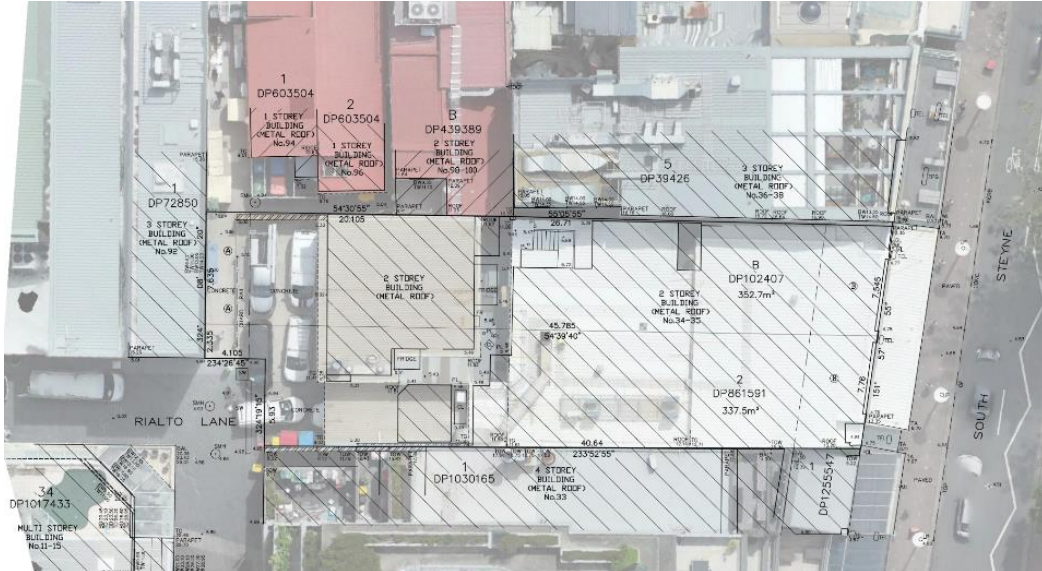


Figure 2: Site survey extract



Figure 3: Subject property as viewed from South Steyne



Figure 4: Subject property as seen from Rialto Lane

2.1.1 The Locality

The site is located within the B2 Local Centre Zone, as shown on the Zoning Map of MLEP 2013 (Figure 5).



Figure 5: Extract of Zoning Map of MLEP 2013



The surrounding area comprises development of varying use, scale, density, age and architectural style. A visual representation of the surrounding development, including development in the wider B2 zone is shown in Figures 6 to 10, below.



**Figure 6: View of South Steyne in a northerly direction,
with the subject property to the left**



**Figure 7: View of South Steyne in a southerly direction,
with the subject property on the right**



Figure 8: The opposite side of the street (eastern side of South Steyne)



Figure 9: Four and five storey development to the south of the subject site



Figure 7: Four and five storey development to the north of the subject site

3 Description of Proposed Development

3.1 Details of the proposed development

The proposed development is depicted in the architectural plans set prepared by Durbach Block Jagers. This application provides for the following built form and land use outcomes:

- Demolition of the existing site structures,
- Construction of a 3-4 storey commercial building over 2 basement levels, comprising:
 - Basement Level 02: commercial bin store and 12 parking spaces, inclusive of a loading bay, a disabled parking space, an EV charging space and 2 carshare/rideshare spaces,
 - Basement Level 01: 152.04m² of commercial floor space, retail bin store, amenities, plant areas, end of trip (EOT) facilities & bicycle storage,
 - Ground Level: 370.54m² of retail floor space presenting to both South Steyne and Rialto Lane, basement entry from Rialto Lane, through site link connecting South Steyne and Rialto Lane, services and lobby for upper level commercial space,
 - Level 01: 502.75m² of commercial floor space, amenities, services, balcony to South Steyne, central courtyard,
 - Level 02: 522.29m² of commercial floor space, amenities, services, balcony to South Steyne, central courtyard,
 - Level 03: 209.42m² of commercial floor space, amenities, services, plant equipment, and roof terrace with lap pool,
 - Roof: solar panels
- Internal lift and stair access,
- Landscaping, and
- Stormwater infrastructure,

The proposed development presents as a three storey building to South Steyne, marrying with the parapet heights of the adjoining buildings. The fourth level is setback at the rear of the site and will not be readily visible from South Steyne or the beachfront reserve.

The proposed development demonstrates a superior architectural design solution for the site, providing exceptional levels of amenity for future occupants of the development whilst also exceeding sustainability and thermal performance targets. The proposal provides a skilfully designed through-site pedestrian link, that is naturally lit and ventilated from the central courtyard and the enlarged openings at both ends.



The architectural design is complemented by upper level plantings, as shown on the Landscape Plans prepared by Wyer & Co. The proposed landscaping will soften the visual impact of the development as seen from South Steyne, will reduce the thermal loading of the building and will provide a pleasant outlook and environment for occupants of the development and occupants from nearby buildings that overlook the subject site.

The acceptability of the access, car parking and servicing arrangements are detailed within the accompanying Traffic and Parking Assessment Report prepared by Varga Traffic Planning Pty Ltd with the proposal's acceptability in relation to accessibility addressed in the accompanying Access Assessment Report prepared by Code Performance Pty Ltd.

The proposal's readiness to comply with the relevant provisions of the BCA is detailed in the BCA Compliance Report prepared by Blackett Maguire & Goldsmith, with a Fire Safety Strategy prepared by Affinity Fire Engineering.

Stormwater is to be collected from the site, directed to the required rainwater tanks or piped to Council's stormwater pit in Rialto Lane. The proposed stormwater management solution developed for the site is detailed in the Stormwater Plans prepared by Edge Consulting Engineers.

The application is supported by an Acoustic Report by Integrated Group Services that provides a series of detailed recommendations to ensure that the acoustic amenity of future occupants is maximised and that any impacts to adjoining properties associated with mechanical plant is minimised.

In light of the excavation proposed to accommodate the basement, the application is supported by a Geotechnical Report by Morrow Geotechnics Pty Ltd and an Acid Sulfate Soils Assessment by Geosyntec Consultants Pty Ltd. Noting that the Geotechnical Report confirms that groundwater was encountered 4m below ground level, structural certification from M & G Consulting Engineers Pty Ltd has also been provided to detail the tanked basement design proposed.

A Flood Risk Management Report, prepared by Edge Consulting Engineers, has been prepared in response to the medium risk flood affectation of the land.

The site is located within the Town Centre Conservation Area and in the vicinity of a number of heritage items. The suitability of the proposal with regard to the local heritage significance of the conservation area and nearby items is considered and positively confirmed in the Heritage Impact Statement prepared by Weir Phillips. Further commentary by Weir Phillips is also provided in response to feedback from Council's Development and Sustainability Advisory Panel.

The application is supported by a Section J – JV3 Assessment Report by Integrated Group Services, confirming that the building performs highly with regard to sustainability and meets and/or exceeds relevant industry standards.

Finally, the application is supported by a Waste Management Plan prepared by Dickens Solutions detailing how waste is to be managed during construction and throughout the life of the development.



4 Statutory Planning Framework

The following section of the report will assess the proposed development having regard to the statutory planning framework and matters for consideration pursuant to Section 4.15 of the EP&A Act, as amended. Those matters which are required to be addressed are outlined, and any steps to mitigate against any potential adverse environmental impacts are discussed below.

4.1 Manly Local Environmental Plan 2013

4.1.1 Zoning

MLEP 2013 applies to the subject site and this development proposal. The subject site is located within the B2 Local Centre zone and the proposed commercial building is permissible with consent.

The proposal is consistent with the stated objectives of the B2 Local Centre zone, as follows:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*

Comment: The proposed development provides 1386.5m² of commercial floor space and 370.54m² of retail floor space to contribute to the existing range of retail, business, entertainment and community uses within the Manly Town Centre.

- *To encourage employment opportunities in accessible locations.*

Comment: The subject site is in a highly accessible location, within walking distance of Manly Wharf and a number of bus stops serviced by differing bus routes.

- *To maximise public transport patronage and encourage walking and cycling.*

- Comment: The proximity of the site to public transport options and nearby pedestrian and cycle pathways, combined with the generally flat nature of the land within the Manly Town Centre, will actively encourage public transport patronage and walking and cycling. This is further encouraged by the specific design solution proposed, which provides EOT facilities and bicycle parking within Basement Level 01.

- *To minimise conflict between land uses in the zone and adjoining zones and ensure amenity for the people who live in the local centre in relation to noise, odour, delivery of materials and use of machinery.*

Comment: The subject site adjoins land of the same B2 zoning. Nonetheless, the application is supported by an Acoustic Report to ensure that noise levels associated with proposed plant equipment and use of the building are acceptable.

Accordingly, there is no statutory zoning or zone objective impediment to the granting of approval to the proposed development.



4.1.2 Height of buildings

Pursuant to the Height of Buildings Map of MLEP 2013, the site has a maximum building height limit of 10m fronting South Steyne, increasing to 12m at the rear of the site.

The objectives of this control are as follows:

- (a) *to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
- (b) *to control the bulk and scale of buildings,*
- (c) *to minimise disruption to the following—*
 - i. *views to nearby residential development from public spaces (including the harbour and foreshores),*
 - ii. *views from nearby residential development to public spaces (including the harbour and foreshores),*
 - iii. *views between public spaces (including the harbour and foreshores),*
- (d) *to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*
- (e) *to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses*

Building height is defined as follows:

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

Within the portion of the site that is subject to the 10m height limit, the proposed development has a height of approximately 11.3m presenting to South Steyne, being the dominant parapet height and the height of all proposed roof top planters. The balustrade of the central staircase and the lap pool reach a maximum height of approximately 12m, with a small awning adjacent to the lift core reaching a maximum height of 13.6m.

Within the portion of the site that is subject to the 12m height limit, the proposed development has a height of approximately 14m presenting to Rialto Lane, reaching a maximum height of 14.5m at the lift core.

The maximum building height prescribed by clause 4.3 of MLEP 2013 is a development standard, as defined by the EP&A Act. Clause 4.6 of MLEP 2013 provides a mechanism by which a development standard can be varied.

The objectives of clause 4.6 of MLEP 2013 are:



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

Having regard to these provisions, strict compliance has been found to be unreasonable and unnecessary having regard to the particular circumstances of the case including the ability to satisfy the objectives of the zone and the objectives of the development standard. Sufficient environmental planning grounds exist to support the variation proposed, as outlined in the accompanying clause 4.6 variation request at **ANNEXURE 1**.

4.1.3 Floor space ratio

Clause 4.4(2) of MLEP 2013 prescribes a maximum floor space ratio of 2.5:1 with respect to the subject site. The objectives of this clause are:

- (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.*

However, clause 4.4(2A) of MLEP 2013 prescribes that the floor space ratio of a building on land in the B2 Local Centre zone may exceed the maximum floor space ratio allowed under subclause (2) by up to 0.5:1 if the consent authority is satisfied that at least 50% of the gross floor area of the building will be used for the purpose of commercial premises. In consideration of this clause, the potential maximum floor space ratio for the site is 3.0:1.

The proposed development has a gross floor area of 1757.04m² and a floor space ratio of 2.55:1. As the entirety of the gross floor area proposed is to be used for commercial purposes, the bonus floor space prescribed by subclause (2A) is applicable and the proposed development is maintained below the maximum floor space ratio prescribed.

Note: In accordance with the provisions of clause 4.2.1.1 of MDCP 2013, the area of the through-site link has been excluded from the calculation of gross floor area for the purpose of determining the FSR calculation.



4.1.4 Heritage conservation

The site is located at the south-eastern most point of the Town Centre Conservation Area and is in the vicinity of a number of sites of local heritage significance. The application is supported by a Heritage Impact Statement by Weir Phillips which concludes:

The proposed works will have an acceptable impact on the Conservation Area because it replaces a neutral infill building with a well-designed contemporary building that sits comfortably in the streetscape. The proposed building is consistent in scale with other buildings and will use a high-quality materials palette of off-form concrete and steel. The proposed building will have a simply detailed front elevation and maintains the established pattern of front setback and orientation to the street. The proposed works will have a minimal and acceptable impact on heritage items within the vicinity as there will be no impact on their fabric, or on significant view corridors towards them. The proposed building is consistent with the setting of the items as characterised by existing infill development. The proposed building is well-designed and will sit comfortably in their setting. The proposed works will, overall, have no impact on the ability of the public to understand and appreciate the historic and aesthetic significance of the items.

The proposed works fulfil the aims and objectives of the Manly LEP 2013 and the Manly DCP 2013 by improving the quality and diversity of commercial options in Manly while respecting the heritage significance of the area in which it lies.

The potential impact upon the heritage significance of the conservation area and adjoining buildings was addressed in the minutes from Council's Design and Sustainability Advisory Panel, who commented:

The proposal is generally in conformity and achieves the objective of Manly DCP 5.1.1 The proposal is within the foreshore scenic protection area and Heritage Conservation Area (HCA) of Manly although not itself of heritage significance. In accordance with Manly LEP 2013 cl 5.10 (4) the consent authority must consider the impact of the proposed development on the heritage significant of the item or area concerned.

The subject site is on the very edge of the HCA. The proposal for a completely glazed eastern façade is in stark contrast to the adjoining buildings although having architectural merit.

The Panel was of the view that recessing the glass to provide some articulation to the façade in addition to that provided by the curved glass sections could be desirable, as would the introduction of some solid sections or masonry blades to relate to the adjoining buildings and most buildings in the HCA.

Recommendation

- 1. Investigate recessing of glazing and the introduction of some solid elements to the eastern façade to better relate to adjoining and nearby buildings*

Weir Phillips have also provided a response to the comments of the Design and Sustainability Advisory Panel under separate cover, as follows:



The site and the adjoining buildings are not contributory to the HCA. The buildings in this section of South Steyne do not exhibit a cohesion or integrity of architectural style that depicts the early development of Manly. The elevations present a contemporary, diverse and stylistically chaotic urban response to Manly Beach, the foreshore scenic protection area and the HCA that has developed ad hoc with little appreciation of architectural form, detail or context. The range of projecting awnings, glazing, materiality, shade structures and balcony treatments to the street are all different and not recessive or sympathetic to the HCA.

The simplicity and translucency of the proposal is in direct contrast to the surrounding visual clutter of projecting forms, shapes and materials. The composure and geometry of the rectangular brass framing is juxtaposed with the gentle and recessed curvilinear glazing and concrete parapet, provides a quiet but robust response to its location within the HCA and proximity to heritage items. Articulation of the elevation is further enhanced by the fine but grand scale treatment of the window framing, chamfered awning details and arched walkway entry through to Rialto Lane.

The proposal reverses the traditional solid to void ratio of the heritage items in the HCA as presented by the Hotel Steyne and in so doing provides a highly considered response that is clearly contemporary in Architectural style. In so doing the finer grain detail of the Inter-War Deco Hotel and other heritage items can be viewed and appreciated for their different architectural style...

Council advises that the proposal for a completely glazed eastern façade is in stark contrast to the adjacent buildings whereas in fact there is extensive glazing on these elevations which are complicated with clunky balconies and balustrades and a multitude of different window and door framing profiles.

The proposed scheme in contrast is devoid of these small-scale cluttered elements. The large-scale glass curvature and sweeping concrete parapet provides a subtle but grand gesture to the curve of Manly Beach and ocean waves.

Overall, Council can be satisfied that the proposed development is consistent with the requirements and objectives of clause 5.10 of MLEP 2013.

4.1.5 Flood planning

The site is identified as being prone to medium risk flooding, as identified on Council's Flood Risk Hazard Map of MDCP 2013. The application is supported by a Flood Risk Management Report by Edge Consulting Engineers which concludes:

The flood risk management report was completed on the review of Council's Flood Information Report (22/05/2022) undertaken by Northern Beaches Council to assess the impact of the development to the floodplain and to demonstrate the flood risk management requirements set by Northern Beaches Council have been met.

Flood mapping for the development depicts the proposed development is within a medium risk precinct, that is typically within the 1% AEP Flood Planning Area (although we note the site in question is not in fact not in the 1% AEP Flood Planning Area). The



report has identified how the development has complied with flood-related development controls outlined in Council's Development Control Plan 2013. These include highlighting the finished floor level is below the FPL but protected at each entrance with [hydraulic] flood barriers and the inclusion of flood-compatible materials for all structures at or below the FPL.

As such, Council can be satisfied that the development is consistent with the requirements and objectives of clause 5.21 of MLEP 2013, in so far as the development-

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

4.1.6 Acid sulfate soils

The site is located within Class 4 as shown on the Acid Sulfate Soils Map of MLEP 2013. The site is supported by an Acid Sulfate Soils Assessment by Geosyntec Consultants Pty Ltd, which concludes that based on their detailed investigation, acid sulfate soils do not appear to be present at the site and an Acid Sulfate Soils Management Plan is not required.

4.1.7 Earthworks

The consent authority can be satisfied that the excavation proposed to accommodate the basement will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, consistent with the provisions of clause 6.2 of MLEP 2013.

The application is supported by a Geotechnical Report by Morrow Geotechnics Pty Ltd and structural certification from M & G Consulting Engineers Pty Ltd in relation to the tanked design of the proposed basement.

4.1.8 Stormwater management

Detailed Stormwater Management Plans prepared by Edge Consulting Engineers accompany the application and demonstrate a suitable stormwater management solution for the site. The consent authority can be satisfied that the proposal is consistent with the provisions of clause 6.4 of MLEP 2013.

4.1.9 Foreshore scenic protection area



Clause 6.9 of MLEP 2013 identifies matters that must be considered with respect to foreshore scenic protection before consent is granted to the proposed development. These matters are considered, as follows:

- (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,*

Comment: The proposed development will not overshadow the foreshore, with any additional overshadowing to the east limited to the confines of the roadway. Further, noting the absence of any apparent public view corridors across the site, the proposed development will not impact upon views of the foreshore from any public places. Rather, the proposed through-site link will provide a new view corridor from Rialto Lane through to Manly Beach, providing a point of context for people travelling along the rear laneway.

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

Comment: The proposed development is a high-quality architectural design response that will positively contribute to the scenic quality of the area.

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

Comment: The proposed has been designed to sensitively respond to the context of the site. The proposed development has also had appropriate regard for the amenity of adjoining properties, ensuring that resultant impacts upon sunlight, visual privacy and views are minimal and not unreasonable.

When viewed from the waterway, the proposed development will be seen to be complementary and compatible with surrounding development.

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

Comment: The proposed development will not result in any conflict between land-based and water-based coastal activities.

The consent authority can be satisfied that the proposal is consistent with the objectives and requirements of clause 6.9 of MLEP 2013.

4.1.10 Active street frontages

The boundary of the subject site presenting to South Steyne is identified on the Active Street Frontages Map of MLEP 2013. Pursuant to clause 6.11 of MLEP 2013, development consent must not be granted to the erection of a building unless the consent authority is satisfied that the building will have an active street frontage after its erection. An "active street frontage" is said to be achieved if all premises on the ground floor of the building facing the street are used for the purposes of business premises or retail premises.



Council can be satisfied that the building has an active street frontage to South Steyne, with retail floor space extending across the full width of the street façade, excluding the portion of the façade associated with the fire access stairs and the through-site link.

Whilst not mapped as an active street frontage, the proposed development also includes retail floor space at the Rialto Lane street frontage, to enhance and complement the existing presence of retail premises along the laneway and to further activate the proposed through-site link.

4.1.11 Essential services

Pursuant to clause 6.12 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.*

The consent authority can be satisfied that these services will be available prior to occupation, and conditions of consent can be imposed in this regard.

4.1.12 Design excellence

In accordance with the provisions of clause 6.13 of MLEP 2013, development consent must not be granted for the erection of a new building on land within the B2 Local Centre zone unless the consent authority considers that the development exhibits design excellence.

Clause 6.13(4) of MLEP 2013 prescribes a series of matters to be considered when determining whether the development exhibits design excellence. These matters are considered, as follows:

- (a) *contains buildings that consist of a form, bulk, massing and modulation that are likely to overshadow public open spaces, and*

Comment: The proposed development does not result in any unreasonable or excessive overshadowing of nearby public places.

- (b) *is likely to protect and enhance the streetscape and quality of the public realm, and*

Comment: The proposed development is a high-quality architectural design that will positively enhance both the South Steyne and Rialto Lane streetscapes.

- (c) *clearly defines the edge of public places, streets, lanes and plazas through separation, setbacks, amenity, and boundary treatments, and*

Comment: The proposed development provides a skilfully designed through-site link, providing both a physical and visual connection between Rialto Lane and the beachfront. The entrances to the through-site link and the individual components of the building are clearly defined and are appropriately located with respect to the context of the site.

- (d) *minimises street clutter and provides ease of movement and circulation of pedestrian, cycle, vehicular and service access, and*

Comment: The proposed development does not impede pedestrian movement along the South Steyne public road reserve or Rialto Lane. Rather, the proposal provides improved pedestrian amenity and circulation by virtue of the through-site link. The basement carpark and service bay is appropriately accessed via Rialto Lane, with no vehicular access proposed along the South Steyne frontage.

- (e) *encourages casual surveillance and social activity in public places, streets, laneways and plazas, and*

Comment: The retail floor space at the ground floor will provide casual surveillance of both South Steyne and Rialto Lane. The lobby of the upper floor commercial floor space is strategically located midway along the through site link, providing light and surveillance of the proposed pedestrian through-site link. The upper floor commercial spaces also provide enhanced casual surveillance of the rear laneway and the beachfront promenade.

- (f) *is sympathetic to its setting, including neighbouring sites and existing or proposed buildings, and*

Comment: The proposed development has been sensitively designed to respond to the surrounding context, specifically the heritage significance of the Town Centre Conservation Area and nearby items of local heritage significance.

- (g) *protects and enhances the natural topography and vegetation including trees, escarpments or other significant natural features, and*

Comment: The site does not contain any significant natural features.

- (h) *promotes vistas from public places to prominent natural and built landmarks, and*

Comment: The proposed development provides a new view corridor from Rialto Lane through to Manly Beach, by virtue of the proposed through-site pedestrian link.

- (i) *uses high standards of architectural design, materials and detailing appropriate to the building type and location, and*

Comment: As confirmed by Weir Phillips in their response to the minutes of the DSAP meeting, Durbach Block Jagers are a reputable design focused practice that have proven they consistently provide quality buildings of fine architectural merit. The proposed building is a superior design response that will significantly enhance the architectural quality of built form in the Manly Town Centre.

- (j) *responds to environmental factors such as wind, reflectivity and permeability of surfaces, and*



Comment: The project has been underpinned by detailed site analysis that has informed the function and expression of each element of the building. The proposed building is thermally efficient and sustainable, providing a high level of amenity for future occupants of the spaces proposed.

- (k) *coordinates shared utility infrastructure to minimise disruption at street level in public spaces.*

Comment: The building is to be services from Rialto Lane to minimise disruption along South Steyne, the primary frontage of the site.

Further, we note that Council has established a Design and Sustainability Advisory Panel (DSAP) to ensure the promotion and delivery of high-quality built environments which feature design excellence and sustainability. Whilst we assume that the subject proposal will be referred to DSAP, we note that the proposal was supported by DSAP during the pre-lodgement process, who stated:

The Panel believes that the building would be a good urban fit, and appropriate to its location in a heritage conservation area.

As such, we are confident that Council will find that the development exhibits design excellence, consistent with the provisions of clause 6.13 of MLEP 2013.

4.1.13 Gross floor area in Zone B2

Clause 6.16(3) of MLEP 2013 prescribes that development consent must not be granted to the erection of a building on land in Zone B2 Local Centre unless the consent authority is satisfied that at least 25% of the gross floor area of the building will be used as commercial premises. Council can be satisfied in this regard, noting that 100% of the building is to be used as commercial premises.

Clause 6.16(4) of MLEP 2013 prescribes that development consent must not be granted for development on land to which this clause applies if the gross floor area of any retail premises on the land would exceed 1,000 square metres. The retail component of the building is limited to a gross floor area of 370.54m².

Council can be satisfied that the proposed development is consistent with the provisions of clause 6.16 of MLEP 2013.

4.2 Manly Development Control Plan 2013

4.2.1 Townscape (Local and Neighbourhood Centres)

The proposed development is consistent with the requirements and objectives of clause 3.1.3 of MDCP 2013, as follows:

- The proposed commercial building has been designed to sensitively respond to the context of the site, to ensure that the bulk of the development does not detract from the significance of the Town Centre Conservation Area or nearby items of local significance.



- The height of the development as it presents to South Steyne responds to the overall wall and parapet height of adjoining buildings.
- The proposed development provides a through-site link between Rialto Lane and South Steyne.
- The level of the through-site link and the retail premises are at footpath level, providing an accessible path of travel into and through the building.
- The front setback of the development is responsive to the setbacks of adjoining and nearby development, to positively contribute to the established streetscape setting.

4.2.2 Heritage Consideration

The site is located at the south-eastern most point of the Town Centre Conservation Area and is in the vicinity of a number of sites of local heritage significance. The application is supported by a Heritage Impact Statement by Weir Phillips that concludes that the proposed development is appropriate with respect to the requirements and objectives of MLEP 2013 and MDCP 2013, and that the proposed development will not have an adverse impact upon the heritage significance of the Town Centre Conservation Area or nearby items of local heritage significance.

4.2.3 Landscaping

The application is supported by detailed Landscape Plans prepared by Wyer & Co that demonstrate a highly considered landscape solution for the site. The landscaping complements the proposed architectural form and positively contributes to the amenity of the proposed development and the surrounding environment.

The proposed landscaping is consistent with the requirements and objectives of clause 3.3.1 of MDCP 2013.

4.2.4 Sunlight Access and Overshadowing

The proposed development is supported by Solar Access Diagrams by Durbach Block Jagers that demonstrate the additional overshadowing resulting from the proposed development. The additional overshadowing arising from the proposal is largely maintained within the public road reserves, with no unreasonable impacts upon solar access to nearby residential apartments.

4.2.5 Privacy and Security

The proposed development is oriented to the front and rear of the site and will not result in any unreasonable impacts upon the privacy of adjoining or nearby properties.

The site will be appropriately managed to maximise safety for occupants of the development and people passing through, with appropriate casual surveillance achieved from the ground floor retail premises, the upper level commercial premises and the central lobby.



The application is supported by an Acoustic Report by Integrated Group Services that considers future internal noise levels and external noise emissions from the operation of services, collection of waste and the use of the proposed roof terrace and pool. The report confirms that the internal noise levels comply with the relevant provisions of AS2107:2016 and that noise generated by the use of the building will comply with the EPA Noise Policy for Industry, subject to a series of recommendations.

The proposed development is consistent with the objectives and requirements of clause 3.4.2 of MDCP 2013.

4.2.6 Maintenance of Views

Views of Manly Beach are available from the subject site in an easterly direction. These views are also enjoyed by upper-level apartments of buildings to the west of the subject site. As demonstrated in the View Analysis prepared by Durbach Block Jaggers, the proposed development has been designed to align with the levels of adjoining buildings, with views of the ocean and the Norfolk Island Pines that line the foreshore maintained over the top of the proposed development.

In this respect, Council can be satisfied that the disruption of views from nearby properties has been reasonably minimised and that view sharing between properties is achieved, consistent with the objectives and requirements of clause 3.4.3 of MDCP 2013.

4.2.7 Sustainability

The proposed development promotes ecologically sustainable design practices, with a high performance façade, low embodied energy construction, rain water harvesting and storage on site, PV cells, passive ventilation, EOT bicycle facilities and efficient HVAC Controls and Zoning.

The application is supported by a Section J – JV3 Assessment Report by Integrated Group Services confirming that the proposed development meets or exceeds necessary requirements and industry standards.

4.2.8 Accessibility

Clause 3.6.1 of MDCP 2013 requires all new development to meet the relevant requirements of the Disability (Access to Premises – Buildings) Standards 2010 and the BCA with respect to the design of equitable access. The application is supported by an Access Report prepared by Code Performance Pty Ltd that confirms compliance with the provisions of this clause.

4.2.9 Stormwater Management

Clause 3.7 of MDCP 2013 requires the management of stormwater to comply with the provisions of Council's *Water Management for Development Policy*.

Stormwater is to be collected from the site, directed to the required rainwater tanks and either reused on site or piped to Rialto Lane. The proposed stormwater management solution



developed for the site is detailed in the Stormwater Plans prepared by Edge Consulting Engineers.

4.2.10 Waste Management

Clause 3.8 of MDCP 2013 requires all development to comply with the appropriate sections of Council's Waste Management Guidelines, with all development applications to be accompanied by a Waste Management Plan.

The application is supported by a Waste Management Plan prepared by Dickens Solutions detailing how waste is to be managed both during construction and throughout the life of the development.

4.2.11 Mechanical Plant Equipment

The proposed lift overrun is centrally located and is appropriately integrated into the design of the development. Plant equipment will be sited and maintained to prevent adverse acoustic impacts for future occupants of the development and adjoining properties.

The application is supported by an Acoustic Report by Integrated Group Services that provides a series of detailed recommendations to ensure that the acoustic amenity of future occupants is maximised and that any impacts to adjoining properties associated with the operation and use of the building is minimised.

The proposed development is consistent with the requirements and objectives of clause 3.9 of MDCP 2013.

4.2.12 Safety and Security

The proposed commercial building has been designed to appropriately respond the CPTED design principles, providing an environment that is safe and secure for all future occupants and visitors, consistent with the provisions of clause 3.10 of MDCP 2013.

4.2.13 Earthworks (Excavation and Filling)

The application is supported by a Geotechnical Investigation by Morrow Geotechnics Pty Ltd which has assessed and considered the subsurface conditions of the site and provides comments and recommendations to ensure that the development is undertaken safely, with minimal impact to the surrounding environment.

4.2.14 Built Form Controls Compliance Table

A table demonstrating compliance with the relevant provisions of the DCP is detailed as follows:

Control	Requirement	Proposed	Compliance
Part 4.2 – Development in Business Centres			
4.2.1 FSR	Arcades and other types of thoroughfares which are available for public use at all times may be excluded from the calculation of gross floor area for the purpose of determining the FSR.	Noted. The proposed development complies with the maximum FSR prescribed for the site, irrespective of whether the GFA of the through-site link is included within the FSR calculation or not.	Yes
4.2.2 Height of Buildings	In determining whether to grant an exception to the LEP height standard, the environmental planning grounds to justify contravening the development standard (LEP clause 4.6(3)) may include consideration of the design principles at paragraph 3.1.3.1 Design Principles in this DCP.	Noted. The proposed development has been designed to complement the parapet height of adjoining development, consistent with the provisions of this clause.	Yes
4.2.3 Setbacks Controls in LEP Zones B1 and B2	All buildings must be constructed to the public road and side boundaries of the allotment	The proposed development has nil setbacks to South Steyne, Rialto Lane and both side setbacks.	Yes

Control	Requirement	Proposed	Compliance
4.2.5.1 Design for Townscape Carparking	<p>Maintain the predominant pattern of narrow fronted buildings within the town centre with new buildings incorporating modulation of the street wall such as recesses or modulation in the building facade to visually reduce the length and perceived bulk of the street wall.</p> <p>Maintain existing setbacks.</p> <p>New development to enhance townscape characteristics, disregarding existing unsympathetic buildings.</p>	<p>The narrow width of the subdivision pattern is carried onto the front façade, with two distinct panels of glazing presenting to South Steyne.</p> <p>The alignment of the existing building is maintained, to marry with the height and alignment of the adjoining buildings.</p> <p>The proposed development positively contributes to the existing streetscape and the Manly Town Centre Conservation Area.</p>	Yes
4.2.5.2 Height of Buildings: Consideration of Townscape	<p>Consideration of the appropriate heights within the maximum Building Height development standard and exceptions to the standard in the LEP.</p>	<p>The height of the façade presenting to South Steyne marries that of adjoining buildings. The height of the building increases at the rear, in response to both the height plane prescribed by MLEP 2013 and the height of adjoining and nearby buildings at the rear.</p>	Yes
4.2.5.3 Security Shutters	<p>Shop window security roller shutters are not permitted on the external face of the building. Such screens may only be</p>	<p>Security shutters are not proposed.</p>	Yes

Control	Requirement	Proposed	Compliance
	used behind the window display.		
4.2.5.4 Car Parking and Access	<p>In exceptional circumstances and having regard to the merits of the application, Council may be prepared to allow a reduction in the any parking rate/ requirements in Manly Town Centre (including residential and commercial) where the applicant has demonstrated that:</p> <ul style="list-style-type: none"> i) in the case of all uses other than dwellings, the dimensions or topography of the site would physically prevent the provision of some or all of the required spaces; ii) the required access interferes with the continuity of retail frontage or interrupts the frontage of the property in other ways such that there would be a conflict with any other provisions of this DCP in particular the townscape objectives; or 	<p>In accordance with Schedule 3 of MDCP 2013, the proposed development generates demand for 40 parking spaces. The proposed development provides a total of 12 spaces, including 2 car share spaces (which equate to 5 spaces each), therefore equating to a total of 20 parking spaces.</p> <p>As addressed in the Traffic and Parking Assessment Report prepared by Varga Traffic Planning Pty Ltd, the proposed parking arrangement is appropriate for the specific context of the site, noting the limitations associated with the area of the site and access via Rialto Lane.</p>	Acceptable on merit

Control	Requirement	Proposed	Compliance
	iii) the movement of vehicles to and from the site would cause unacceptable conflict with pedestrian movements, special servicing arrangements for pedestrianised areas or contribute to congestion at key intersections.		
4.4.4.1 Awnings	Continuous footpath awnings must be provided on all street frontages generally consistent with the streetscape. The width, fascia height and method of support of all awnings in any street block must be consistent with entrances to public lands and through-site links allowed to be accentuated and generally in accordance with given dimensions.	Awnings are provided along the South Steyne façade. The design of the awning over the entrance to the through-site link is deliberately different to that of the retail space to make a distinction between the public and retail spaces.	Yes
4.4.5 Earthworks	A dilapidation survey report and geotechnical assessment may be required for excavation works exceeding 1m.	The application is supported by a Geotechnical Report by Morrow Geotechnics Pty Ltd. There is no objection to the imposition of conditions of consent requiring the production of dilapidation reports, if deemed necessary by Council.	Yes

Control	Requirement	Proposed	Compliance
5.1 Manly Town Centre Heritage Conservation Area	The Manly Town Centre Conservation Area maintains a high level of social significance, as a popular destination for local, national and international tourists, as well as through its encapsulation of the Australian beach culture.	The site is located at the south-eastern most point of the Town Centre Conservation Area and is in the vicinity of a number of sites of local heritage significance. The application is supported by a Heritage Impact Statement by Weir Phillips that concludes that the proposed development is appropriate with respect to the requirements and objectives of MLEP 2013 and MDCP 2013, and that the proposed development will not have an adverse impact upon the heritage significance of the Town Centre Conservation Area or nearby items of local heritage significance.	Yes
5.4.3 Flood Prone Land	Development must comply with the prescribed Matrix. Development on flood prone land requires the preparation of a Flood Management Report by a suitably qualified professional.	The site is identified as being prone to medium risk flooding, as identified on Council's Flood Risk Hazard Map of MDCP 2013. The application is supported by a Flood Risk Management Report by Edge Consulting Engineers.	Yes



4.3 State Environmental Planning Policy (Resilience and Hazards) 2021

4.3.1 Remediation of Land

Chapter 4 of SEPP (Resilience and Hazards) applies to all land and aims to provide for a state-wide planning approach to the remediation of contaminated land.

Clause 4.6(1)(a) of this policy requires the consent authority to consider whether land is contaminated. The site has been used for commercial purposes for an extended period of time with no known prior land uses. In this regard, the potential for contamination is considered to be extremely unlikely.

The site is not identified as a contaminated site on the NSW EPA's list of notified sites, nor is it in the vicinity of any listed sites. The consent authority can be satisfied that the subject site is suitable for the proposed development.

As such, the proposed development is consistent with the provisions of Chapter 4 of this policy.

4.4 State Environmental Planning Policy (Biodiversity and Conservation) 2021

4.4.1 Sydney Harbour Catchment

The subject property is located within the Sydney Harbour Catchment and therefore, the provisions of Chapter 10 of this policy apply to this development. An assessment of the proposal against the relevant aims of the chapter has been undertaken, and the consent authority can be satisfied in this regard. Whilst referral to the Foreshores and Waterways Planning and Development Advisory Committee is at the discretion of Council, it is our opinion that referral is not warranted in the circumstances of this application.

4.5 Matters for Consideration pursuant to section 4.15(1) of the Environmental Planning and Assessment Act 1979 as amended

The following matters are to be taken into consideration when assessing an application pursuant to section 4.15(1) of the EP&A Act (as amended):

(i) *any environmental planning instrument*

The proposed commercial building is permissible and consistent with the provisions of MLEP 2013 and MDCP 2013 as they are reasonably applied to the proposed works given the constraints imposed by the site's location, environmental and topographical characteristics.

(ii) *Any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*



There are no draft environmental planning instruments relevant to the proposed development.

(iii) *Any development control plan*

MDCP 2013 is applicable to this application and has been considered in detail in this report.

(iiia) *Any Planning Agreement that has been entered into under section 7.4 or any draft planning agreement that a developer has offered to enter into under Section 7.4, and*

N/A

(iv) *The Regulations (to the extent that they prescribe matters for the purposes of this paragraph), and*

N/A

(v) *Any Coastal Zone Management Plan (within the meaning of the Coastal Protection Act 1979)*

N/A

(b) *The likely impacts of that development, including environmental impacts on both the natural and built environments and social and economic impacts in the locality,*

[The assessment considers the Guidelines (in italics) prepared by the Department of Planning and Environment in this regard].

Context and Setting

i. *What is the relationship to the region and local context in terms of:*

- *The scenic qualities and features of the landscape*
- *The character and amenity of the locality and streetscape*
- *The scale, bulk, height, mass, form, character, density and design of development in the locality*
- *The previous and existing land uses and activities in the locality*

These matters have been discussed in the body of this report.

ii. *What are the potential impacts on adjacent properties in terms of:*

- *Relationship and compatibility of adjacent land uses?*
- *sunlight access (overshadowing)*
- *visual and acoustic privacy*



- *views and vistas*
- *edge conditions such as boundary treatments and fencing*

These matters have been discussed in detail earlier in this report. The potential impacts are considered to be acceptable with regard to the relevant provisions of MDCP 2013.

Access, transport and traffic:

Would the development provide accessibility and transport management measures for vehicles, pedestrians, bicycles and the disabled within the development and locality, and what impacts would occur on:

- *Travel Demand*
- *dependency on motor vehicles*
- *traffic generation and the capacity of the local and arterial road network*
- *public transport availability and use (including freight rail where relevant)*
- *conflicts within and between transport modes*
- *Traffic management schemes*
- *Vehicular parking spaces*

These issues have been discussed in detail in the report. The development provides adequate carparking facilities in consideration of the context of the site.

Public Domain

The proposed development will have no adverse impact on the public domain. Rather, the proposal will result in a significant enhancement of the public domain, by virtue of the high-quality architectural design solution proposed.

Utilities

This matter has been discussed in detail in the body of this report.

Flora and Fauna

The proposal will not result in any adverse impacts upon flora and fauna.

Waste Collection

Waste will be managed appropriately on the site.

Natural hazards

The site has been designed to be safe from natural hazards.

Economic Impact in the locality

The proposed development will generate temporary employment during construction. On-going employment will be provided through the commercial and retail floor spaces proposed, in addition to services associated with the management of the building and proposed tenancies/land uses.

Site Design and Internal Design

i) *Is the development design sensitive to environmental considerations and site attributes including:*

- *size, shape and design of allotments*
- *The proportion of site covered by buildings*
- *the position of buildings*
- *the size (bulk, height, mass), form, appearance and design of buildings*
- *the amount, location, design, use and management of private and communal open space*
- *Landscaping*

These matters have been discussed in detail earlier in this report. The potential impacts are considered to be minimal and within the scope of the general principles, desired future character and built form controls.

ii) *How would the development affect the health and safety of the occupants in terms of:*

- *lighting, ventilation and insulation*
- *building fire risk – prevention and suppression*
- *building materials and finishes*
- *a common wall structure and design*
- *access and facilities for the disabled*
- *likely compliance with the Building Code of Australia*

The proposed development will comply with the provisions of the Building Code of Australia. The proposal complies with the relevant standards pertaining to health and safety and will not have any detrimental effect on the occupants.

Construction

i) *What would be the impacts of construction activities in terms of:*



- *The environmental planning issues listed above*
- *Site safety*

Normal site safety measures and procedures will ensure that no safety or environmental impacts will arise during construction.

(c) *The suitability of the site for the development*

- *Does the proposal fit in the locality*
- *Are the constraints posed by adjacent development prohibitive*
- *Would development lead to unmanageable transport demands and are there adequate transport facilities in the area*
- *Are utilities and services available to the site adequate for the development*
- *Are the site attributes conducive to development*

The adjacent development does not impose any unusual or impossible development constraints. The development will not cause excessive or unmanageable levels of transport demand.

The development responds to the topography and constraints of the site, is of adequate area, and is a suitable design solution for the context of the site.

(d) *Any submissions received in accordance with this act or regulations*

It is envisaged that Council will appropriately consider any submissions received during the notification period.

(e) *The public interest*

The proposed works are permissible and consistent with the intent of the LEP and DCP controls as they are reasonably applied to the proposed development. The development would not be contrary to the public interest.



5 Conclusion

The proposal is permissible and in conformity with the objectives of MLEP 2013 as they reasonably relate to this form of development on this particular site. The proposed development appropriately responds to the guidelines contained within the MDCP 2013 and the massing and built form established by nearby developments.

Durbach Block Jagers, the project architects, have responded to the client brief to design a contextually responsive building of exceptional quality with high levels of amenity for future occupants of the commercial spaces. In this regard, the scheme has been developed through detailed site and contextual analysis to identify the constraints and opportunities associated with the development of this site having regard to the height, scale, proximity, use and orientation of surrounding development and the flood affectation of the land.

It is considered that the application, the subject of this document, is appropriate on merit and is worthy of the granting of development consent for the following reasons:

- The accompanying plans depict a high quality and contextually appropriate built form outcome that responds to adjacent and nearby development and the surrounding environment. The proposed development is a suitable design solution in light of the zoning of the land and the context of the site.
- The apparent height and bulk of the proposed development is compatible with that of surrounding development, and consistent with the desired future character of the locality.
- Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191, we have formed the considered opinion that most observers would not find the apparent size of the proposed development offensive, jarring or unsympathetic in the streetscape context.
- Whilst the proposal requires the consent authority to give favourable consideration to a variation to the building height development standard, strict compliance has been found to be unreasonable and unnecessary in this instance as the development is otherwise consistent with the objectives of the development standard and sufficient environmental planning grounds exist to support the variation (as outlined in the attached Clause 4.6 Variation Request).
- The non-compliance with the car parking requirements prescribed by MDCP 2013 has been acknowledged and appropriately justified having regard to the associated objectives. Such variation succeeds pursuant to section 4.15(3A)(b) of the EP&A Act which requires Council to be flexible in applying such provisions and allow reasonable alternative solutions that achieve the objects of DCP standards for dealing with that aspect of the development.
- The proposal will provide a notable increase to the supply of commercial floor space on a site ideally suited to an appropriate mix of business, office and retail premises.



- The proposed development has been amended in response to the feedback from Council's Design and Sustainability Advisory Panel (DSAP) provided at the DSAP meeting on 26 May 2022 and in the subsequent minutes provided.

Having given due consideration to the matters pursuant to Section 4.15(1) of the EP&A Act as amended, it is considered that there are no matters which would prevent Council from granting consent to this proposal in this instance.

Boston Blyth Fleming Pty Limited



Greg Boston

Director

ANNEXURE 1

CLAUSE 4.6 VARIATION REQUEST – HEIGHT OF BUILDINGS

1 Clause 4.6 variation request – Height of Buildings

1.1 Introduction

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

1.2 Manly Local Environmental Plan 2013 (MLEP 2013)

1.2.1 Clause 4.3 – Height of Buildings

Pursuant to the Height of Buildings Map of MLEP 2013, the site has a maximum building height limit of 10m fronting South Steyne, increasing to 12m at the rear of the site, as shown in Figure 1, below.

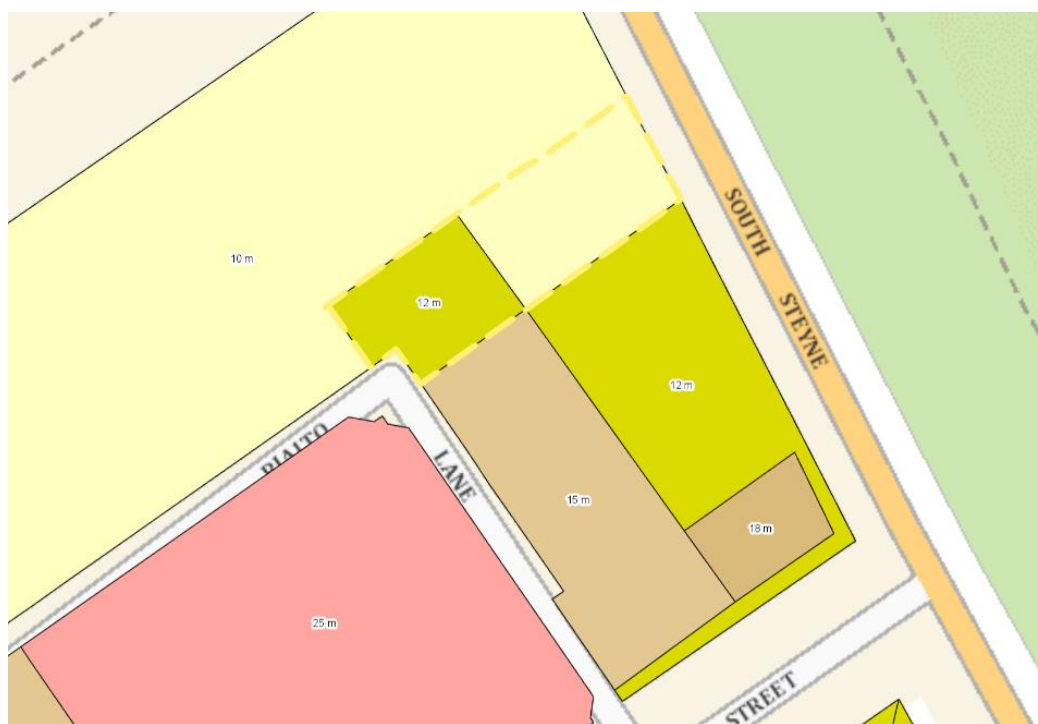


Figure 1: Height of Buildings Map of MLEP 2013

The objectives of this control are as follows:

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

- (b) *to control the bulk and scale of buildings,*
- (c) *to minimise disruption to the following:*
 - (i) *views to nearby residential development from public spaces (including the harbour and foreshores),*
 - (ii) *views from nearby residential development to public spaces (including the harbour and foreshores),*
 - (iii) *views between public spaces (including the harbour and foreshores),*
- (d) *to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*
- (e) *to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

Building height is defined as follows:

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

Ground level existing is defined as follows:

ground level (existing) means the existing level of a site at any point.

Within the portion of the site that is subject to the 10m height limit, the proposed development has a height of approximately 11.3m presenting to South Steyne, being the dominant parapet height and the height of all proposed roof top planters. The balustrade of the central staircase and the lap pool reach a maximum height of approximately 12m, with a small awning adjacent to the lift core reaching a maximum height of 13.6m.

Within the portion of the site that is subject to the 12m height limit, the proposed development has a height of approximately 14m presenting to Rialto Lane, reaching a maximum height of 14.5m at the lift core.

The extent of the proposed variations can be summarised, as follows:

- Dominant parapet height = 11.3m, 1.3m or 13% variation to 10m height limit
- Central staircase and lap pool = 12.0m, 2.0m or 20% variation to 10m height limit
- Small awning adjacent to lift = 13.6m, 3.6m or 36% variation to 10m height limit

- Level 4 commercial area = 14m, 2m variation of 16.7% variation to 12m height limit
- Lift Overrun = 14.5m, 2.5m or 20.8% variation to 12m height limit

The extent of non-compliance is highlighted in red in the extract of Section D in Figure 2, over the page.

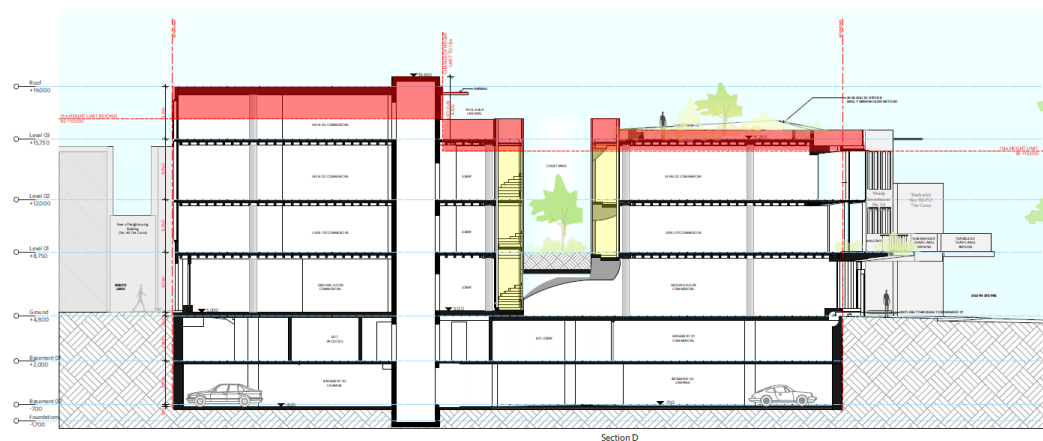


Figure 2: Extract of Section D with breaching elements highlighted in red

1.2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of MLEP 2013 provides:

The objectives of this clause are:

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

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

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

"In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the



clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”. If objective (b) was the source of the Commissioner’s test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test.”

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

Clause 4.6(2) of MLEP 2013 provides:

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

This clause applies to the building height development standard in clause 4.3 of MLEP 2013.

Clause 4.6(3) of MLEP 2013 provides:

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

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

The proposed development does not comply with the building height development standard at clause 4.3 of MLEP 2013 which specifies a building height of 10m-12m. However, strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

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

Clause 4.6(4) of MLEP 2013 provides:

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

- (a) the consent authority is satisfied that:*
 - (i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and*



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

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

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

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

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

The Local Planning Panels Direction issued by the Minister for Planning and Public Spaces, dated 30 June 2020, provides that local planning panels have the delegation to approve development that contravenes a development standard imposed by an environmental instrument by more than 10%.

Clause 4.6(5), which relates to matters that must be considered by the Director-General in deciding whether to grant concurrence is not relevant, as the Council has the authority to determine this matter. Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.3 of MLEP 2013 from the operation of clause 4.6.

1.3 Relevant Case Law

In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular, the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 continue to apply as follows:

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

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



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

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

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

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

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

1. Is clause 4.3 of MLEP 2013 a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.3 of MLEP 2013 and the objectives for development for in the zone?
4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?

5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.3 of MLEP 2013?

1.4 Request for variation

1.4.1 Is clause 4.3 of MLEP 2013 a development standard?

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

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

Clause 4.3 of MLEP 2013 prescribes a height limit for development on the site. Accordingly, clause 4.3 of MLEP 2013 is a development standard.

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

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

The first approach is relevant in this instance, being that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Consistency with objectives of the building height development standard

An assessment as to the consistency of the proposal when assessed against the objectives of the standard 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 height of the proposed development is consistent with that of surrounding development and development within the visual catchment of the site. In particular, the front parapet height of the development has been designed to marry with the height of adjoining buildings, as shown in Figure 3 over the page.

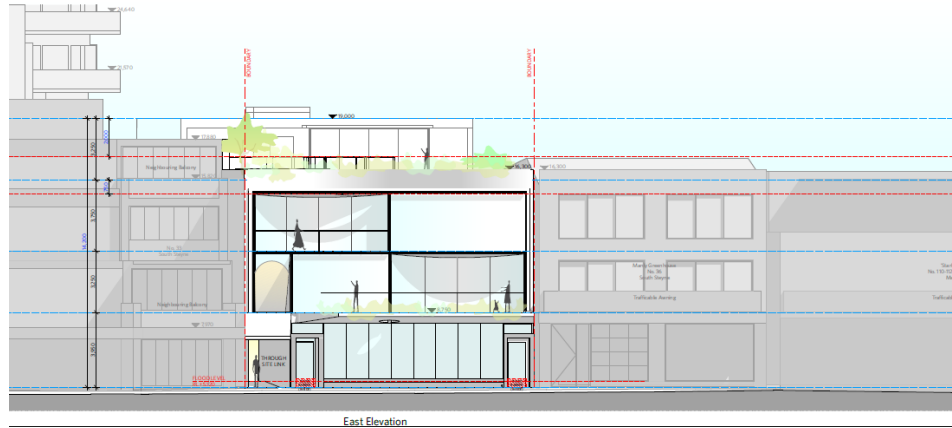


Figure 3: South Steyne Elevation

It is noted that this approach, where the parapet height matches that of adjacent buildings, is encouraged by clause 4.2.2 of MDCP 2013, as shown in Figure 4, below.

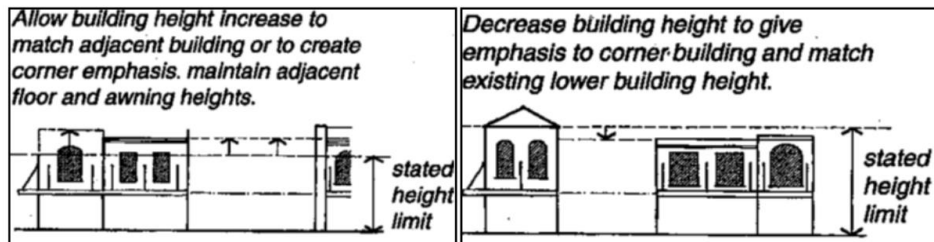


Figure 4: Extract of clause 4.2.2 of MDCP 2013

The increased height at the rear of the development is set back from the primary street frontage and will not be readily visible as seen from South Steyne. The height of the building presenting to Rialto Lane is contextually appropriate, having regard to the increased height anticipated by MLEP 2013 and the height of surrounding and nearby development, as shown in Figure 5 over the page.

It is noted that the proposal has been reviewed by Council's Design and Sustainability Advisory Panel, who raised no objection to the height of the proposed development, or the variations proposed.

The non-compliant elements of the proposed development do not detract from consistency with this objective.

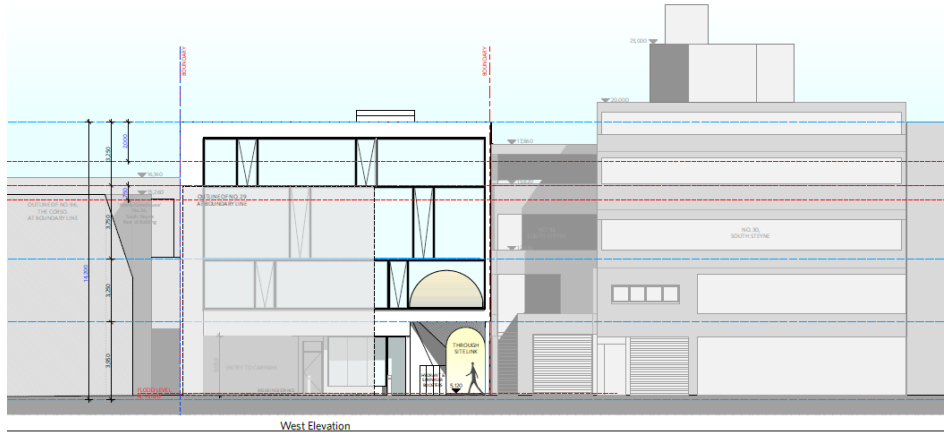


Figure 5: Rialto Lane Elevation

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

Comment: The proposed development is well articulated with a height that is consistent with surrounding built form. Further, the proposed development is maintained well below the maximum permitted floor space ratio, which is the primary development standard to control the bulk and scale of development.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council (2005) NSW LEC 191* I have formed the considered opinion that most observers would not find the proposed development by virtue of its bulk and scale offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the visual catchment of the site.

Once again, it is noted that the proposal has been reviewed by Council's Design and Sustainability Advisory Panel, who raised no objection to the height of the proposed development, or the variations proposed. Of particular relevance, the panel confirmed that they are generally supportive of the bulk and scale 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: Views of Manly Beach are available from the subject site in an easterly direction. These views are also enjoyed by upper-level apartments of buildings to the west of the subject site. As demonstrated in the View Analysis prepared by Durbach



Block Jagers, the proposed development has been designed to align with the levels of adjoining buildings, with views of the ocean and the Norfolk Island Pines that line the foreshore maintained over the top of the proposed development.

In consideration of the objectives of MLEP 2013 and MDCP 2013 that encourage consistency with the prevailing building height and noting the bonus floor space provisions prescribed by clause 4.4 of MLEP 2013 for commercial development in this location, Council can be satisfied that disruptions to views haven been reasonably minimised.

- (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 non-compliant elements of the proposed development do not result in any adverse impacts upon the amount of sunlight received by adjoining properties.

- (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: Not applicable – the site is located within the B2 Local Centre zone and not within a recreation or environmental protection zone.

Consistency with zone objectives

The subject property is zoned B2 Local Centre zone pursuant to MLEP 2013. The development's consistency with the stated objectives of the B2 zone is as follows:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*

Comment: The proposed development provides 1386.50m² of commercial floor space and 370.54m² of retail floor space to contribute to the existing range of retail, business, entertainment and community uses within the Manly Town Centre.

- *To encourage employment opportunities in accessible locations.*

Comment: The subject site is in a highly accessible location, within walking distance from Manly Wharf and a number of bus stops serviced by differing bus routes.

- *To maximise public transport patronage and encourage walking and cycling.*

- Comment: The proximity of the site to public transport options and nearby pedestrian and cycle pathways, combined with the generally flat nature of the land within the Manly Town Centre, will actively encourage public transport patronage and walking and cycling. This is further encouraged by the specific design solution proposed, which provides EOT facilities and bicycle parking within Basement Level 01.



- To minimise conflict between land uses in the zone and adjoining zones and ensure amenity for the people who live in the local centre in relation to noise, odour, delivery of materials and use of machinery.

Comment: The subject site adjoins land of the same B2 zoning. Nonetheless, the application is supported by an Acoustic Report to ensure that noise levels associated with proposed plant equipment and use of the building are acceptable.

The non-compliant development, as it relates to building height, demonstrates consistency with objectives of the zone and the building height development standard objectives. Adopting the first option in *Wehbe*, strict compliance with the height of buildings standard has been demonstrated to be unreasonable and unnecessary in the circumstances of this application.

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

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

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

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

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

Sufficient environmental planning grounds

Ground 1 – Contextually responsive building design

Despite non-compliance with the building height development standard, the proposed development is consistent and compatible with the height of immediately adjoining buildings, other development within the visual catchment of the site and other development subject to the same height provisions.

Specifically, the height of the front parapet aligns with that of adjoining and nearby development, as shown on in the photomontage in Figure 6, below.



Figure 6: Photomontage of development as seen from South Steyne

Consistent with the provisions of clause 4.2.2.1 of MDCP 2011, consistency with the height of adjacent and adjoining buildings can be relied upon as sufficient environmental planning grounds to justify contravention of the building height development standard.

Although the site is not subject to a number of storeys control, it can be assumed that a three storey development is anticipated within the 10m portion of the site, with a four storey development anticipated within the 12m portion of the site. This assumption is confirmed by nearby and adjoining development that are subject to the same height limits including:

- The four storey street façade at 28-29 South Steyne (12m height limit) (Figure 7),
- The four storey street façade at 30-32 South Steyne (12m height limit) (Figure 7),
- The four storey street façade at 33 South Steyne (12m height limit) (Figure 7),
- The three-five storey building at 43-45 South Steyne (10m-12m height limit) (Figure 8),
- The three-five storey building at 46-47 South Steyne (10m-12m height limit) (Figure 8).

The proposed development is limited to 3 storeys within the portion of the site that is subject to the 10m height limit and 4 storeys within the portion of the site that is subject to the 12m height limit, consistent with the perceived height and scale of nearby and surrounding development.

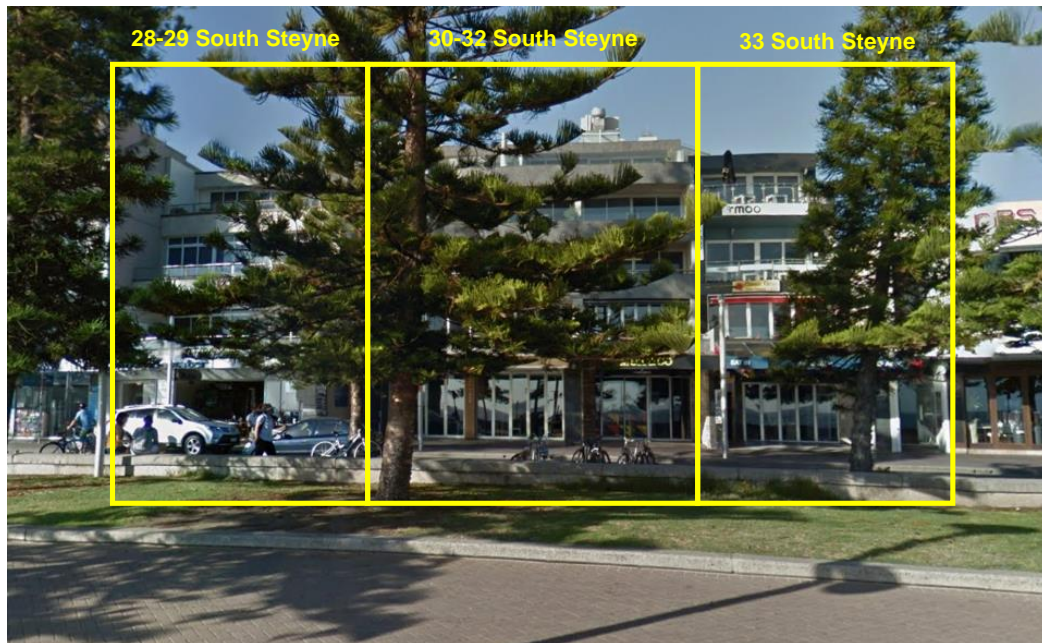


Figure 7: Adjoining & nearby development along South Steyne



Figure 8: Nearby development along South Steyne



Council's acceptance of the proposed height variation will ensure the orderly and economic development of the site, in so far as it will ensure conformity with the scale and character established by other existing development within the visual catchment of the site, consistent with Objective 1.3(c) of the EP&A Act.

The proposed development is also compatible with the height of immediately adjacent development along South Steyne and has been sensitively designed to respond to both the location of the site and also the form and massing of adjoining development. The building is of exceptional design quality with the variation facilitating a height that provides for contextual built form compatibility, consistent with Objective 1.3(g) of the Act.

Ground 2 – Consistency with Council's Policies

Front Façade

The proposed breach of the building height plane at the street frontage is consistent with the provisions of clause 4.2.2 of MDCP 2013, which provide that conformity with the prevailing parapet height constitutes sufficient environmental planning grounds to justify a breach to the height plane.

Floor Space Ratio Bonus

The provisions of clause 4.4(2A) of MLEP 2013 prescribe that the floor space ratio of a building on land in the B2 Local Centre zone may exceed the maximum floor space ratio shown on the Floor Space Ratio Map by up to 0.5:1 if the consent authority is satisfied that at least 50% of the gross floor area of the building will be used for the purpose of commercial premises.

Essentially, the LEP provides a floor space bonus, above what is otherwise permitted, on sites within the B2 zone that are to be used primarily for commercial purposes. 100% of the proposed development is to be used for commercial purposes, and as such, the additional floor space is reasonably applied. The proposed development has sought to minimise the visual impact of this additional floor space by providing commercial floor space within the basement.

Strict compliance with the height of buildings development standard would detract from consistency with the specific standards and controls that apply with respect to the specific use proposed at the subject site and discourage the application of the commercial floor space bonus.

In consideration of the objectives of the B2 Local Centre zone, which emphasise the need for and importance of commercial floor space within the zone, the floor space ratio bonus is considered to hold greater determining weight than the height standard, particularly in circumstances where the development is of such an exceptionally high architectural standard and consistent with the prevailing heights of adjoining and nearby development.

Allowing for the height breach in consideration of other the application of other standards and controls is considered to ensure the orderly and economic development of the site, consistent with Objective 1.3(c) of the EP&A Act.



Ground 3 – Public Benefit

The proposed development comprises a pedestrian through-site link, that will significantly improve pedestrian connectivity throughout the town centre and the activation of Rialto Lane. The voluntary inclusion of the site link, which is highly endorsed/supported by Council, reduces the area of floor space at the ground level of the subject site, which has a premium rental return noting the site's location and outlook to Manly Beach.

The provision of additional floor space partially above the height plane is considered to be justified in consideration of the public benefit associated with the incorporation of the through-site link at the ground floor.

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

1.4.4 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 4.3 and the objectives of the B2 Local Centre Zone

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

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

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

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

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

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

1.4.5 Secretary's concurrence

The Local Planning Panels Direction issued by the Minister for Planning and Public Spaces, dated 30 June 2020, provides that local planning panels have the delegation to approve



development that contravenes a development standard imposed by an environmental instrument by more than 10%.

Concurrence of the Secretary can therefore be assumed in this case.

1.5 Conclusion

Pursuant to clause 4.6(4)(a) of MLEP 2013, the consent authority can be satisfied that this written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

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

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

Boston Blyth Fleming Pty Limited



Greg Boston

B Urb & Reg Plan (UNE) MPIA

Director



Design + Sustainability Advisory Panel Meeting Report – Date 27 October 2022

Item 2 - DA2022 1164 - 34-35 South Steyne MANLY

General

The Panel reviewed the proposal at Pre-DA stage on 26 May 2022 and made 11 recommendations.

Some of these recommendations have been incorporated into the revised design.

Strategic context, urban context: surrounding area character

The site achieves 0.5:1 bonus by virtue of its commercial use. This additional area is difficult to achieve within the designated height controls.

As previously noted,

the Panel believes that the building would be a good urban fit, and appropriate to its location in a heritage conservation area.

The Panel did comment specifically on the amount of glazing:

The proposal is within the foreshore scenic protection area and Heritage Conservation Area of Manly although not itself of heritage significance. In accordance with Manly LEP 2013 cl 5.10 (4) the consent authority must consider the impact of the proposed development on the heritage significance of the item or area concerned.

The subject site is on the very edge of the HCA. The proposal for a completely glazed eastern façade is in stark contrast to the adjoining buildings although having architectural merit.

The Panel was of the view that recessing the glass to provide some articulation to the façade in addition to that provided by the curved glass sections could be desirable, as would the introduction of some solid sections or masonry blades to relate to the adjoining buildings and most buildings in the HCA.

Recommendation 1:

Investigate recessing of glazing and the introduction of some solid elements to the eastern façade to better relate to adjoining and nearby buildings.

Has not been pursued, no alternative treatments were presented. It remains the view of the Panel that alternative façade treatments should be investigated.

The application is accompanied by a design statement that sets out the overall approach and includes the following:

The proposal is a contemporary response to its context and use. The fine grain scale of the openings reflects rather than imitates the scale of the street wall, creating a contemporary office environment with generous views and terraces.

The Panel remains of the view that alternatives should be investigated for the following reasons:

- A contemporary response does not necessarily rely on a fully glazed façade
- The size of the openings and glazing can in no way be considered 'fine grain' when seen in the context of surrounding buildings

Recommendation

1. Investigate recessing of glazing and the introduction of some solid elements to the eastern façade to better relate to adjoining and nearby buildings.



Scale, built form and articulation

The Panel is generally supportive of the scale and built form of the proposal.

The Panel notes that the permissible heights and allowable FSR including bonuses for commercial use are not aligned; it is simply not possible to achieve the FSR withing the height limits. Additionally, the Panel is supportive of generous floor to floor heights. The 0.5m increase in height from the Pre-DA scheme is noted but is considered to have insignificant additional impact.

It is not clear how much natural light would actually penetrate into the through site link. The applicant is encouraged to maximise the amount of glazing between the circular court and the through site link. This would appear possible on level 01 between grids 4 and 5 with possible extension right through to the proposed 'void to TSL' at the eastern end with minimal loss of floor area.

Some changes have been made but how the basement would function for food and beverage or as a gym is not clear given that these spaces would need to be accessible.

The Panel appreciates the attempt to introduce natural light and ventilation to the basement through the introduction of a 'skylight' but considers this insignificant and consequently could be deleted. This leaves the question of the use of the basement level.

Recommendations

2. The Panel is supportive of the habitable awning and the clear demarcation of the entry to the through site link. Consideration could be given to aligning the southern edge with the subtended extension of the boundary line.
3. Maximise the natural light and extent of the double height portion of the through site link
4. Consider conditions accompanying the approval to restrict the uses of the basement to not include commercial (office) working space

Access, vehicular movement and car parking

No further comment, the Panel remains supportive of the reduced car parking numbers given the location, its accessibility and constraints imposed by the geometry and dimensions of the site.

The Panel is very supportive of the bicycle parking and commitment to end of trip facilities.

The Panel also commented on the arrangement of services in relation to Rialto Lane. The Panel makes no further comment as any technical issues will be resolved in discussion with Council.

Landscape

Generally, the landscape treatments appear suitable in relation to their conditions and location and the appropriate soil depths appear to be provided. The rooftop is a simple refined space which will provide flexibility of use and a quality communal space.

Pool accessibility and fencing is unclear.

The awning terrace is considered a positive for activation of the public domain.

Recommendations

5. Consider the detailed integration of the pool fencing and provision of universal accessibility to the pool so it is beautifully designed in

Amenity

Issues related to exhausts have been addressed.

Façade treatment/Aesthetics

Refer to previous comments about contextual fit (recommendation 1)



Sustainability

The proposal complies with the NCC section J.

There has been no commitment to, or investigation of whether it might be possible to achieve Net Zero in operation.

It would appear that the 15KW that is included in the proposal could be doubled given the amount of roof area available. This would reduce the annual CO₂-e from the proposed 119,000kg CO₂-e emissions by approximately 22,772 kg (refer to p 28 of Energy Efficiency report).

This is still a long way from carbon neutrality, however it is not clear what other strategies or approaches have been explored to further reduce CO₂-e emissions beyond compliance with the NCC.

We are living in a climate emergency – all new buildings should be designed to be as naturally comfortable as possible without heating and cooling (passive design) and should not rely on energy from fossil fuels. This should be possible in a coastal location like Manly that has a very different climate from Observatory Hill that is the weather station used in the Section J assessment.

The impacts of climate change and the changes to energy supply and security are out-pacing policy and regulation. The role of the Panel is to advise on 'design (quality) and sustainability' and is not confined to existing legislation or the approaches of the past. Accordingly, the Panel believes it is appropriate and necessary for it to provide 'forward-thinking advice' to both proponents and to council staff involved in the assessment of development. With the current massive spikes in energy from uncertain times, the advisability to build the comfort and energy resilience of projects is even more obvious.

With the regulatory environment changing in the near future – for efficiency, electrification and mandatory disclosure – these investments at this time will be worthwhile both for future residents and the developers' reputation, market position and marketability of the building.

Recommendations

6. Double the amount of PV to 30kW
7. Increase the number of bi-directional EV charging points. Car spaces 5, 7, 9, 10 and 11 would also be suitable for points
8. All services should be electric – gas for cooking, hot water and heating should be avoided.
 - Heat pump systems for electric hot water should be considered
 - The storage of hot water can be considered a de-facto battery if heated by PVs during the day
 - Note the risk of gas reticulation becoming a 'stranded asset' and the possibility of additional costs to remove gas and rewire the building
9. Consider site battery storage has benefits for the grid and may be a highly desirable back-up during the transition to a de-carbonised grid

PANEL CONCLUSION

The Panel supports the proposal in general but considers further refinements are needed.

In particular:

- **Investigate recessing of glazing and the introduction of some solid elements to the eastern façade to better relate to adjoining and nearby buildings**
- **Increase the amount of natural light entering the through site link and the extent of the double height volume**
- **The applicant is strongly encouraged to investigate ways of minimising CO₂-e emissions in operation**

ITEM 4.2**DA2023/0544 - 6 STEWART AVENUE, CURL CURL -
CONSTRUCTION OF A SECONDARY DWELLING****AUTHORISING MANAGER****Rod Piggott****TRIM FILE REF****2023/676532****ATTACHMENTS**

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

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is the subject of 10 or more unique submissions by way of objection.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2023/0544 for construction of a secondary dwelling subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0544
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Responsible Officer:	Nick Keeler
Land to be developed (Address):	Lot 3 DP 6260, 6 Stewart Avenue CURL CURL NSW 2096
Proposed Development:	Construction of a secondary dwelling
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Anil Kumar Fulwaria Neelam Fulwaria
Applicant:	Anthony James

Application Lodged:	17/05/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	30/08/2023 to 13/09/2023
Advertised:	Not Advertised
Submissions Received:	17
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 193,600.00
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EXECUTIVE SUMMARY

This development application seeks consent for construction of a secondary dwelling.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) as it attracted seventeen (17) objections during the notification period and is therefore sensitive development, per the Minister's direction for planning panels.

Concerns raised in the objections predominantly relate to bulk and scale, compatibility with the prevailing character, flooding issues, landscaping and privacy.

Critical assessment issues include the proposal's compliance with the flood prone land and built form development controls of the Warringah Development Control Plan (WDCP). The site is located in the Greendale Creek catchment and is subject to the new Greendale Creek Flood Study, which was adopted by Council on 22 August 2023.

This assessment found the proposal is generally compliant with the WDCP development controls and will not have an unreasonable impact upon adjacent properties or the public domain.

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

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for the construction of a secondary dwelling at the rear of the site and associated landscaping.

AMENDED PLANS

During assessment, Council raised concerns that the proposed development did not comply with the relevant flood prone land development controls, including not providing an adequate shelter-in-place refuge above the Probable Maximum Flood (PMF) level. The applicant was also advised to review the concerns raised in the submissions and consider an alternative design to reduce the impact of the development on adjacent properties and the public domain.

In response to the above, the applicant amended the siting and design of the secondary dwelling, including the following:

- Alter the siting of the secondary dwelling centrally within the site.
- Increase the rear setback from 6m to 7m (8m to the rear building line).
- Increase the floor level above the PMF level from RL 4.30 to RL 4.75.
- Amend the roof design.
- Reduce the overall height of the structure from 5.5m to 5.1m.
- Increase landscaped open space.
- Additional screen planting along the western boundary.

A site plan comparison of the original and amended proposal is pictured below:



Left: Amended proposal
Right: Original proposal

Due to the extent of amendments and likely changed environmental impact upon adjacent properties compared to the originally notified proposal, the application was renotified in accordance with the provisions of the Northern Beaches Community Participation Plan.

ASSESSMENT INTRODUCTION

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

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

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

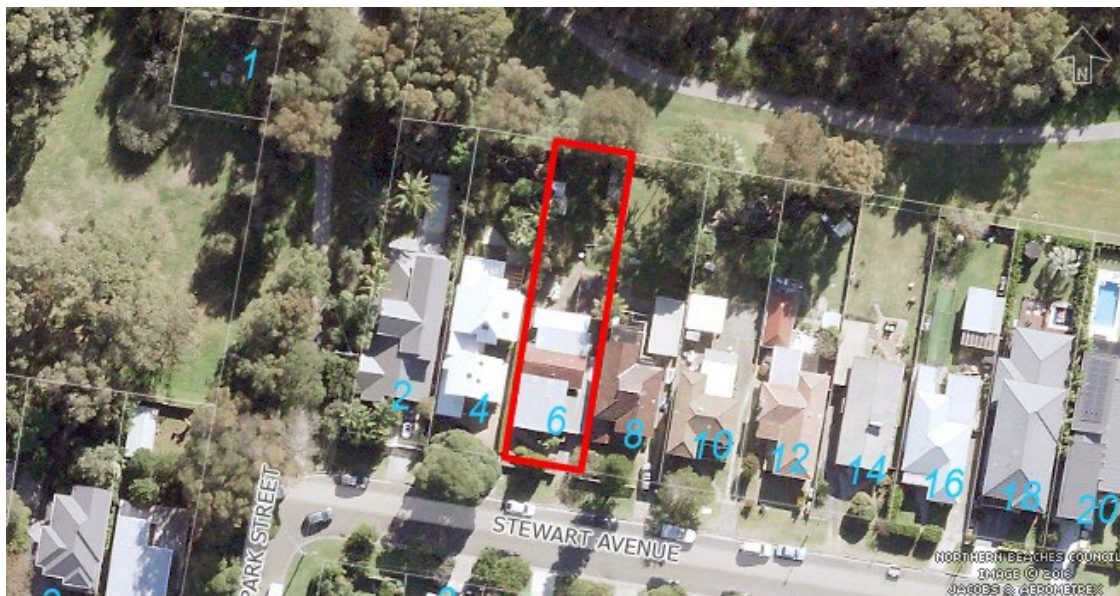
SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D8 Privacy

SITE DESCRIPTION

Property Description:	Lot 3 DP 6260 , 6 Stewart Avenue CURL CURL NSW 2096
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northern side of Stewart Ave.</p> <p>The site is regular in shape with a frontage of 12.190m along Stewart Ave and a depth of 49.380m. The site has a surveyed area of 600m².</p> <p>The site is located within the R2 Low Density Residential zone within the <i>Warringah Local Environmental Plan 2011 (WLEP 2011)</i> and accommodates a single storey residential dwelling with a detached garage, outbuilding and metal shed within a landscaped setting.</p> <p>The site is located on a slope of approximately of 2.01m (or 4.1%), falling from the south-eastern corner of the site toward the rear north-west corner.</p> <p>The site is not known to have any threatened species.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by one (1) and two (2) storey residential dwellings within landscaped settings. Directly to the north of the subject site is a public recreation area which comprises Greendale Creek, Curl Curl Lagoon and Harbord Lagoon, John Fisher Netball courts and John Fisher Reserve Baseball, Soccer and Rugby fields. To the west is the Stirgess Avenue Playground and Stirgess Reserve (John Fisher Park).</p>

Map:



SITE HISTORY

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

Application **DA2022/1187** for demolition works and construction of a dwelling house was approved on 02/12/2022 by Council staff. That approval has not yet been taken up and works have not commenced at the time of writing.

APPLICATION HISTORY

This application was notified for a 14 day period between 23 May 2023 and 6 June 2023. Fifteen (15) submissions were received during the initial notification period.

Upon receipt of amended plans and supporting documentation, as outlined in the "Amended Plans" section of this report, the application was re-notified for another 14 day period between 30 August 2023 and 13 September 2023.

During the second notification period, five (5) additional submissions were received, resulting in a total of seventeen (17) submissions.

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 Matters for Consideration	Comments
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)	<p>Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter is not relevant to this application.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact</p>

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 30/08/2023 to 13/09/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 17 submission/s from:

Name:	Address:
Mrs Katharine Peta Bowen	6 Kimbriki Road INGLESIDE NSW 2101
Brent Andrew Howard	13 Stewart Avenue CURL CURL NSW 2096
Ms Robyn Anne Wade Mr Peter Wade	289 Great Western Highway BLACKHEATH NSW 2785
Mrs Michelle Anne Taylor	9 Stewart Avenue CURL CURL NSW 2096
Judy Moore	Address Unknown
Mr Evan Andrew Kirby Mrs Felicity Jane Kirby	3 Stewart Avenue CURL CURL NSW 2096
Withheld Withheld	FAIRLIGHT NSW 2094
Withheld Mrs Rosalind Jane Wade	CURL CURL NSW 2096
Withheld Mrs Rosalind Jane Wade	4 Stewart Avenue CURL CURL NSW 2096
Ben Shaw	14 Stonecrop Road NORTH TURRAMURRA NSW 2074
Natalie Gai Kingston	12 Stewart Avenue CURL CURL NSW 2096

Name:	Address:
Curl Curl Lagoon Friends Inc	PO Box 380 FRESHWATER NSW 2096
Jenny Cameron	21 Stirgess Avenue CURL CURL NSW 2096
Ms Heather Dawn Menzies	1 Stewart Avenue CURL CURL NSW 2096
Mrs Marie Jennifer Taylor	28 Stewart Avenue CURL CURL NSW 2096
Suzanne Johns	Address Unknown
Katharine Bowen	Address Unknown
Mr Richard William Michell	11 Vale Avenue DEE WHY NSW 2099

The following issues were raised in the submissions:

- Flooding
- Building height and setbacks
- Bulk and scale
- Privacy
- Landscaping
- Parking
- Access to secondary dwelling
- Floor area
- Overshadowing
- Impact on riparian area
- Impact on wildlife
- Number of amendments to application
- Inaccuracy of submitted information

The above issues are addressed as follows:

- **Flooding**

The submissions raised concerns that the proposed development does not comply with Council's flood prone land development controls.

Comment:

Despite the application being lodged when the Dee Why Lagoon and Curl Curl Lagoon Flood Studies (2004) were the subject flood studies for the Greendale Creek catchment, as a matter of best practice, Council's Flooding team has assessed this development application based on the recently published flood data under the draft Greendale Creek Flood Study (2023) which was exhibited to the public between 29 March 2023 and 7 May 2023. Based on the new flood study, the proposed development, as amended, is consistent with the requirements of Council's flood prone land development controls, subject to conditions. Refer to the comments from Council's Flooding team for details.

It is noted that the draft Greendale Creek Flood Study was formally adopted by Council on 22 August 2023 and is now the subject flood study for new development within the Greendale Creek catchment.

- **Building height and setbacks**

The submissions raised concerns that the proposed development presents excessive height and unreasonable setbacks.

Comment:

The proposed development demonstrates compliance with the building height and setback development controls. The maximum height of the proposed secondary dwelling is 3.4m below the maximum permitted building height for the site. The building complies with the rear and side setback control requirements, being 7m and 1.2m respectively. The proposed height and setbacks of the building are not considered to be unreasonable in the context of the site and surrounds.

- **Bulk and scale**

The submissions raised concerns that the bulk and scale of the proposed development is excessive and inconsistent with the character of the locality.

Comment:

The proposed development is not considered to present an unreasonable bulk and scale. The building is well below the maximum permitted building height, is contained within the permitted building envelope and complies with the setback requirements. The bulk and scale of the proposed development is not considered to introduce an undesirable built form into the locality and is found to be generally consistent with the intentions of the development controls in shaping future development in the locality.

- **Privacy**

The submissions raised concerns that the proposed development will result in unreasonable privacy impacts upon adjacent properties.

Comment:

The proposed development is not considered to result in unreasonable privacy impacts upon adjacent properties. A privacy screen is provided along the eastern edge of the deck. The windows on the side elevations have sill heights of 1.5m above the finished floor level. To ensure privacy impacts from these windows are appropriately managed, a condition is recommended to require all side elevation windows to have a sill height of at least 1.65m above the finished floor level. Screen planting is proposed along the western boundary to further assist in managing privacy. As such, the proposed development is not considered to result in unreasonable privacy impacts upon adjacent properties.

Due to an inconsistency between the submitted floor plan and western elevation, a condition is recommended to delete the kitchen splash back window (W4) noted on the floor plan as it is not identified on the western elevation plan. It is unclear what potential privacy impact this window may have upon the adjacent property.

To ensure reasonable levels of privacy are maintained from the secondary dwelling access/egress stairs a condition will be included in the Recommendation to ensure they are centrally

located and entry/exit is towards the rear of the site.

- **Landscaping**

The submissions raised concerns that the proposed development does not provide adequate landscaped open space on the site.

Comment:

The proposed development, as amended, complies with the minimum 40% landscaped open space requirement. Appropriate landscaping and vegetation planting is proposed to soften the bulk of the building from adjacent properties and the public domain.

- **Parking**

The submissions raised concerns that the proposed development does not provide sufficient onsite parking spaces.

Comment:

Under section 53 of SEPP (Housing) 2021, Council cannot refuse a development application where additional onsite parking spaces for a secondary dwelling are not provided. As such, the existing provision of parking on the site is acceptable.

- **Access to secondary dwelling**

The submissions raised concerns that tenants of the secondary dwelling will access the site from the public reserve to the north of the site.

Comment:

The applicant does not propose any alteration to the existing site access. Formal access to the site is obtained as existing from Stewart Avenue. A gate to the public reserve is located within the rear fence, however the application does not propose to formalise this as an access point for the secondary dwelling.

- **Floor area**

The submissions raised concerns that the floor area of the secondary dwelling exceeds the maximum permitted 60m².

Comment:

The floor area of the proposed secondary dwelling is calculated as being 58m², which complies with the maximum floor area permitted under SEPP Housing.

- **Overshadowing**

The submissions raised concerns that the proposed development will cause overshadowing of the subject site's private open space and adjacent properties.

Comment:

The shadow diagrams submitted by the applicant indicate sufficient solar access is provided to the private open space of the subject site and adjacent properties and is consistent with the minimum solar access development control.

- **Impact on riparian area**

The submissions raised concerns that the proposed development will unreasonably impact upon the nearby riparian area.

Comment:

Council's Riparian team has reviewed the proposed development and have not raised any objection to the proposed development, subject to conditions. As such, no unreasonable impact upon the nearby riparian area is expected.

- **Impact on wildlife**

The submissions raised concerns that the proposed development will unreasonably impact upon wildlife that inhabit the site and surrounding area.

Comment:

Council's Bushland and Biodiversity team has reviewed the proposed development and have not raised any objection to the proposed development, subject to conditions. The raised nature of the structure will allow for wildlife to traverse the site beneath the building. As such, no unreasonable impact upon the nearby wildlife is expected.

- **Number of amendments to application**

The submissions raised concerns that the proposed development has been amended several times and that amendments should be assessed under a new development application.

Comment:

Amended plans are able to be accepted under the this application based on the Environmental Planning and Assessment Act 1979 provisions. A new development application is not required to be submitted to consider the amendments. Refer to the "Amended Plans" section of this report for details on the amendments to the original proposal.

- **Inaccuracy of submitted information**

The submissions raised concerns that the submitted plans and documentation contain errors, inaccuracies and omit information that precludes assessment of the development application.

Comment:

The submitted plans and documentation are generally consistent with Council's Lodgement Requirements. The plans and documentation have been reviewed to identify any inaccuracies

or inconsistencies. As discussed above, a condition is recommended to delete the kitchen splash back window (W4) to ensure the inconsistency between plans is addressed and that the window will not cause unintended impact upon adjacent properties. In addition, Council's assessing officer has undertaken inspections at the subject site, public domain and western neighbour to determine the extent of potential impact of the development independent of the submitted plans and documentation.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><i>Supported, subject to conditions</i></p> <p><u>Amended plans dated August 2023</u></p> <p>The amended application has been investigated with respects to aspects relevant the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
NECC (Bushland and Biodiversity)	<p><i>Supported, subject to conditions</i></p> <p>The proposal seeks approval for the construction of a secondary dwelling.</p> <p>The comments in this referral relate to the following controls and provisions:</p> <ul style="list-style-type: none"> • SEPP (Resilience and Hazards) 2021 - Coastal environment area • Warringah DCP Clause E2 Prescribed Vegetation • Warringah DCP Clause E4 Wildlife Corridors • Warringah DCP Clause E6 Retaining unique environmental values <p>Biodiversity Comments (26 May 2023)</p> <p>The proposal has been submitted with a landscape plan with adequate species for the area. No objections are raised.</p> <p>The proposal would take place in a previously disturbed site and no trees have been proposed for removal. The impact to native flora and fauna is unlikely.</p> <p>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.</p> <p>Updated Biodiversity Comments (1 September 2023)</p> <p>The amended plans and documentation are noted. The modified</p>

Internal Referral Body	Comments
	design will not result in additional impacts to native vegetation, wildlife or their habitats. The proposal is therefore supported, subject to conditions.
NECC (Coast and Catchments)	<p>Supported, subject to conditions</p> <p>The application has been assessed in consideration of the Coastal Management Act 2016 and State Environmental Planning Policy (Resilience & Hazards) 2021. The application has also been assessed against requirements of the Warringah LEP 2011 and Warringah DCP 2011.</p> <p>Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore Coastal Management Act 2016 is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the Coastal Management Act 2016.</p> <p>State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA. On internal assessment the DA satisfies requirements under clause 2.12 of the SEPP R&H. As such, it is considered that the application complies with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021.</p> <p>Warringah LEP 2011 and Warringah DCP 2011 No other coastal related issues identified. As such, it is considered that the application complies with the requirements of the coastal relevant clauses of the Warringah LEP 2011 and Warringah DCP 2011.</p>
NECC (Flooding)	<p>Supported, subject to conditions</p> <p>The development proposal is for a granny flat.</p> <p>The development has been assessed against flood information from the Greendale Creek Flood Study (GCFS), which was prepared for Council and became publicly available and used for development assessment from late March 2023. Updated flood Information for the property includes: 1% AEP (100y) level of 2.9mAHD Flood Planning Level (FPL) of 3.4mAHD Probable Maximum Flood (PMF) level of 4.7mAHD</p> <p>The GCFS is the best available information on flooding in the area. The reasons for include, but are not limited to: - The previous study was completed in 2004, since then floodplain modelling techniques and software have significantly improved;</p>

Internal Referral Body	Comments
	<p>- The GCFS utilises up to date, topographical data, pit and pipe data, building outlines data, etc.;</p> <p>- The GCFS utilises updated guidelines, including Australian Rainfall and Runoff (2019) and updated NSW floodplain management guidance; and</p> <p>- The GCFS is calibrated and validated to local rainfall and water level recordings captured during the past 24 years.</p> <p>Floor levels of the proposal are above the PMF level. The proposal complies with Clause E11 of the Warringah DCP. Overall, the proposed development is assessed as: appropriately manage the risk of flooding; compatible with the flood behaviour of the site; as well as satisfactory with other requirements of 5.21 of the Warringah LEP.</p> <p>Therefore, subject to conditions the development is deemed satisfactorily compliant with Council's flood related development controls.</p>
NECC (Riparian Lands and Creeks)	<p>Supported, subject to conditions</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • Relevant LEP and DCP clauses; and • Northern Beaches Water Management for Development Policy <p>The proposal must not significantly impact on the biophysical, hydrological or ecological integrity of Curl Curl lagoon, or the quantity and quality of surface and ground water flows that it receives. A filtration device must be installed to remove organic matter and coarse sediments from stormwater prior to discharge from the land. All stormwater treatment measures must make provision for convenient and safe regular inspection, periodic cleaning, and maintenance.</p> <p>Appropriate sediment and erosion controls must be installed prior to any disturbance of soil on site and maintained until all work is complete and groundcover re-established.</p>
External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p>Supported, subject to conditions</p> <p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs),

Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1381341S_02, dated 17/08/2023).

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 (Housing) 2021

Part 1 – Secondary Dwellings

Clause 52 – Development may be carried out with consent	
Standard	Compliance/Comment
<p>(2) Development consent must not be granted for development to which this Part applies unless—</p> <p>a) No dwellings, other than the principal dwelling and the secondary dwelling, will be located on the land, and</p> <p>b) The total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area permitted for a dwelling house on the land under another environmental planning instrument, and</p> <p>c) The total floor area of the secondary dwelling is:</p> <ul style="list-style-type: none"> i) no more than 60m², or ii) if a greater floor area is permitted for a secondary dwelling on the land under 	<p>Consistent</p> <p>The proposed development will result in one principal dwelling and one secondary dwelling on the site.</p> <p>No floor space ratio control applies to the site.</p> <p>The floor area of the proposed secondary dwelling is 58m².</p>

another environmental planning instrument - the greater floor area.	
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Clause 53 – Non-discretionary development standards—the Act, s 4.15	
Standard	Compliance/Comment
a) For a detached secondary dwelling - a minimum site area of 450m ² .	Consistent The site area is greater than 450m ² .
b) The number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out.	Consistent The proposed development does not reduce the existing and approved amount of parking spaces on the site.

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objections.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

- 1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*

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

Comment:

The proposed development is not expected to cause adverse impact to the coastal environment area.

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

Comment:

Council is satisfied that the proposed development is appropriately designed and sited to ensure adverse impact to the items referred to in subsection (1) is avoided.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

- 1) *Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:*
 - a) *has considered whether the proposed development is likely to cause an adverse impact on the following:*
 - i) *existing, safe access to and along the foreshore, beach, headland or rock 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:

Council is satisfied the proposed development is appropriately designed and sited in a manner that avoids adverse impact to the coastal use area.

Division 5 General

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

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

Comment:

Council is satisfied the proposed development will not cause an increased risk of coastal hazards on the site or surrounding land.

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

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

Comment:

All relevant provisions of applicable certified coastal management programs have been considered as part of the assessment of the application.

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

Chapter 4 – Remediation of Land

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

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	5.1m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
5.21 Flood planning	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation	Complies
B1 Wall height	E - 7.2m	4.6m	N/A	Yes
	W - 7.2m	4.5m	N/A	Yes
B3 Side Boundary Envelope	E - 5m	Within envelope	N/A	Yes
	W - 5m	Within envelope	N/A	Yes
B5 Side Boundary Setbacks	E - 0.9m	2m	N/A	Yes
	W - 0.9m	1.2m	N/A	Yes
B7 Front Boundary Setbacks	6.5m	Behind dwelling	N/A	Yes
B9 Rear Boundary Setbacks	6m	Secondary dwelling - 8m	N/A	Yes
		Landing - 7m	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (240m ²)	40% (240.1m ²)	N/A	Yes

Note: Whilst a 600mm path is proposed to provide pedestrian access to the secondary dwelling this does not reduce the functionality of the landscaped open space provided and is consistent with access paths provided in and around yard areas to service clotheslines and the like.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	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	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
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E8 Waterways and Riparian Lands	Yes	Yes
E10 Landslip Risk	Yes	Yes
E11 Flood Prone Land	Yes	Yes

Detailed Assessment

D1 Landscaped Open Space and Bushland Setting

The landscaped open space of 40% is achieved however it should be noted that there is a 600mm wide path (Stepping stones as per condition in the Recommendation) to provide pedestrian access to the secondary dwelling. This does not reduce the functionality of the landscaped open space provided

and is consistent with access paths provided in and around yard areas to service clotheslines and the like.

The objectives of the control are as follows:

- *To enable planting to maintain and enhance the streetscape.*
- *To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.*
- *To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.*
- *To enhance privacy between buildings.*
- *To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.*
- *To provide space for service functions, including clothes drying.*
- *To facilitate water management, including on-site detention and infiltration of stormwater.*

Accordingly the objectives of the landscaped open space control are met by the proposal.

D8 Privacy

The windows on the side elevations have sill heights of 1.5m above the finished floor level. To ensure privacy impacts from these windows are appropriately managed, a condition is recommended to require all side elevation windows to have a sill height of at least 1.65m above the finished floor level.

Due to an inconsistency between the submitted floor plan and western elevation, a condition is recommended to delete the kitchen splash back window (W4) noted on the floor plan as it is not identified on the western elevation plan. It is unclear what potential privacy impact this window may have upon the adjacent property.

To ensure reasonable levels of privacy are maintained from the secondary dwelling access/egress stairs a condition will be included in the recommendation to ensure they are centrally located and entry/exit is towards the rear of the site.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$ 968 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 193,600.

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

PLANNING CONCLUSION

This proposal, for construction of a secondary dwelling has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to seventeen (17) objections being received.

The concerns raised in the objections have been addressed in the assessment report. Some concerns have been resolved through conditions. Other concerns have not been found to be reasons to refuse the proposal.

Subject to conditions, it is considered that the proposal will result in a development that demonstrates 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 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 the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2023/0544 for Construction of a secondary dwelling on land at Lot 3 DP 6260, 6 Stewart Avenue, CURL CURL, 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
PR023.11 Page 1 Issue B	08/08/2023	Sabton and Son
PR023.11 Page 2 Issue B	08/08/2023	Sabton and Son
PR023.11 Page 3 Issue B	08/08/2023	Sabton and Son

Engineering Plans		
Drawing No.	Dated	Prepared By
150222-01 Sheet 1 Issue C	17/08/2023	VNK Consulting

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. 1381341S_02	17/08/2023	Sabton and Son
Acid Sulphate Assessment (Ref: 57067-IDF)	08/06/2022	Ideal Geotech
Flood Impact Assessment Report - Issue C	21/08/2023	VNK Consulting

b) Despite what is depicted on the stamped plans, this consent does not authorise any works relating to a dwelling house.

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
L/D2023-07 Sheet 1 Issue 2	08/08/2023	Dayspring Landscaping

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	Undated	Anil Fulwaria

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

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

2. **Compliance with Other Department, Authority or Service Requirements**

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	01/06/2023

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

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

3. **Approved Land Use**

Nothing in this consent shall authorise the use of the structure as detailed on the approved plans for any land use beyond the definition of a *secondary dwelling*, in accordance with the Dictionary of the Warringah Local Environmental Plan 2011.

Any variation to the approved land use and occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

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

4. **Prescribed Conditions**

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

- (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.
- Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

5. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished

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

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

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

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

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

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

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

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

(i) Swimming Pools Act 1992

(ii) Swimming Pools Amendment Act 2009

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

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

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

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$968.00 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 \$193,600.00.

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

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

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

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

7. **Security Bond**

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

8. **Flood effects caused by development**

There is to be no filling of the land or any other reduction of the available flood storage which results in a net loss of storage below the 1% AEP flood level of 2.9m AHD.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW

Government policy.

9. **Building components and structural soundness**

B1 - All new development below the Flood Planning Level of 3.4m AHD shall be designed and constructed from flood compatible materials.

B2 - All new dwelling must be designed to ensure structural integrity up to the Probable Maximum Flood Level of 4.7m AHD, taking into account the forces of floodwater, debris load, wave action, buoyancy and immersion.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

10. **Floor levels**

C1 - New floor levels of the granny flat shall be set at or above the Level of 4.7m AHD.

C3 - The underfloor area of the dwelling below the 1% AEP flood level is to be designed to allow clear passage of floodwaters. At least 50% of the perimeter of the underfloor area must be of an open design from the natural ground level up to the 1% AEP flood level.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

11. **Storage of Goods**

Storage areas for hazardous or potentially polluting materials shall not be located below the Flood Planning Level of 3.4m AHD unless adequately protected from floodwaters in accordance with industry standards.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

12. **Erosion and Sediment Control Plan**

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

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities)

- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected.
- North point and scale.

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

Reason: To protect the receiving environment.

13. **Water Quality Management**

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

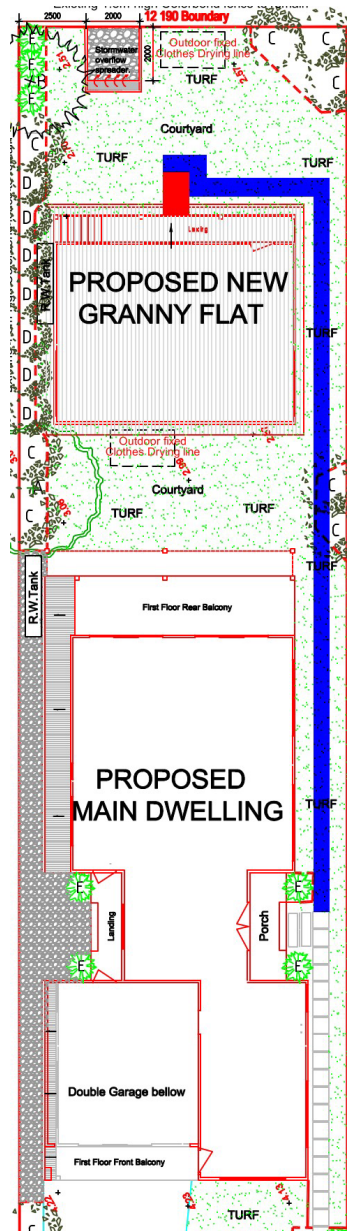
Details demonstrating compliance are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

Reason: Protection of the receiving environment.

14. **Amendments to the approved plans**

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

- All side elevation windows are to incorporate a sill height of at least 1.65m above the finished floor level.
- Window W4 is not approved and must be deleted from the plans.
- The secondary dwelling access stairs must be deleted and be reoriented as indicated in red in the diagram below.
- The stepping stones along the eastern boundary, as indicated in the approved landscape plan, must continue to the base of the secondary dwelling access stairs as indicated in blue in the diagram below. The dimensions of the stones are not exceed 600mm and are to be spaced no less than 50mm apart.



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

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

15. **Boundary Identification Survey**

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property

boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

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

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

16. Laundry Facilities

The building that is proposed to be used as a secondary dwelling is required to comply with Part 10.4.1 of the National Construction Code –‘Required Facilities’. A kitchen sink or washbasin must not be counted as a laundry washtub. Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

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

17. 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.

18. External Finishes to Roof

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

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

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

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.

20. **Construction Certificate**

A construction certificate pursuant to the development granted in this consent may not be issued until the works pursuant to DA2022/1187 have physically commenced.

Reason: To ensure the orderly development of land.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

21. **Installation and Maintenance of Sediment and Erosion Control**

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site

DURING BUILDING WORK

22. **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.

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

Council proactively regulates construction sites for sediment management.

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

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

Reason: To protect the receiving environment.

24. **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.

25. **Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

26. **Pollution Control**

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

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

27. **Certification of Works as Executed**

A suitably qualified engineer and/or registered surveyor is to certify that the completed works have been constructed in accordance with this consent and the approved plans with respect to the following:

1. Floor levels for ground floor, shelter in place refuge and garage are set at or above the required level
2. There has been no filling on the land other than what has been approved
3. Openings are provided under floor areas where required for the free passage of flood waters

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

28. **Building Components and Structural Soundness**

B2 - A suitably qualified structural engineer is to certify the structural integrity of the new dwelling up to the Probable Maximum Flood Level of 4.7m AHD. The depth, velocity, debris load, wave action, buoyancy and immersion must all be considered.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW

Government policy.

29. **No Weeds Imported On To The Site**

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

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

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

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

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

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

Reason: To ensure bushland management.

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. **Occupation Certificate**

An occupation certificate relating to this development consent must not be issued until an occupation certificate for development approved under DA2022/1187 has been issued.

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

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

33. **Maintenance of Stormwater Treatment Measures**

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

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

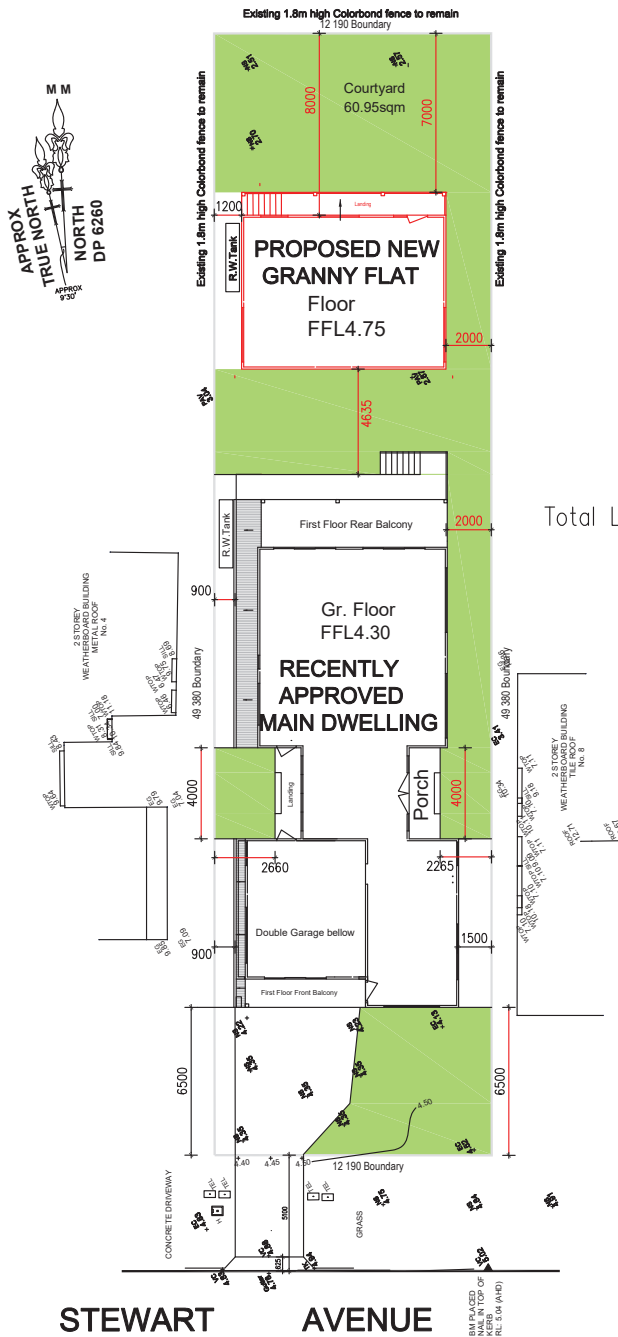
Reason: To protect the receiving environment.

DEVELOPMENT DATA

Lot 3 DP 6260 Site Area	600.00sqm
DA Approved Main Dwelling G. F. Area	126.51sqm
DA Approved Main Dwelling F. F. Area	149.63sqm
Main Dwelling Double Garage Area	33.48sqm
Granny Flat Floor Area	59.81sqm
Total Private Open Space	>150.00sqm

Total Built over area (incl. driveway) 318.17sqm

Total Landscape Area (40.0%) 240.13sqm



TOTAL LANDSCAPE PROVIDED 240.13sqm
40% MIN. LANDSCAPE REQUIRED 240.12sqm

Total Landscape = 240.13sqm = 40.0% shown shaded

GENERAL NOTES

Do not scale drawings. Figured dimensions only to be used. All dimensions to be checked on site prior to commencement of the works.

All work to be done in a tradesperson manner and shall comply in all respects with local Government requirements. Relevant Aust. standards. Building code of Australia and Industry trade practice.

All Electrical, Plumbing and drainage works to be carried out by relevant qualified licenced persons in strict accordance with the requirements of the relevant authority.

All worked to be carried out with a minimum of inconvenience to adjoining residence. Protect adjoining properties from dust and debris. Keep site clean at all times and protect all established flora

All insurances must be taken out prior to the commencement of works and evidence provided to the relevant Authority

All timber framing members to be stress grade F7 or greater unless otherwise noted (except trusses in accordance with manu. Design Spec.). Framing to comply with AS 1684 in all respects. All exposed timbers to be dressed unless otherwise noted and paint primed where applicable prior to installation.

Protect timber from mortar stains and other damage, remove all debris from roof gutters and clean all face bricks on completion of works.

Roof to be build from timber framing and or truss.

All footings, concrete slabs, retaining walls and other load bearing elements to be designed by a Structural Engineers Design.

FOR TERMITE CONTROL SYSTEM

EXTENT OF WORK:

FORM A PHYSICAL TERMITE PROTECTION BARRIER TO PROTECT ALL NEW WORK FROM TERMITE ATTACK.

PROPRIETARY SYSTEM:

TERMIMESH STAINLESS STEEL TERMITE CONTROL BY TMA CORPORATION.

SUPPLY AND INSTALL MARINE GRADE STAINLESS STEEL WOVEN WIRE MESH BY AN ACCREDITED

TECHNICIAN IN ACCORDANCE WITH THE MANUFACTURERS SPECIFICATION AND AUSTRALIAN

STANDARD 3660.1-2000, "TERMITE MANAGEMENT, PART 1: NEW BUILDING WORK".

STEWART AVENUE

SITE PLAN 1:200

DO NOT SCALE DRAWINGS. FIGURED DIMENSIONS ONLY TO BE USED. ALL DIMENSIONS TO BE CHECKED ON SITE PRIOR TO COMMENCEMENT OF THE WORKS.

ALL WORK TO BE DONE IN TRADESPERSON MANNER AND SHALL COMPLY IN ALL RESPECTS WITH LOCAL GOVERNMENT REQUIREMENTS, RELEVANT AUSTRALIAN STANDARDS, BUILDING CODE OF AUSTRALIA AND INDUSTRY TRADE PRACTICE.

THESE DRAWINGS ARE THE PROPERTY OF SABTON AND SON BUILDING DESIGNERS AND ARE PROTECTED BY A COPYRIGHT.

**PROJECT
PROPOSED NEW
DETACHED GRANNY FLAT**

B	PROPOSED NEW DETACHED GRANNY FLAT	AUGUST 2023
A	ATTACHED GRANNY FLAT ADDITION	MARCH 2023

ADDRESS
6 Stewart Ave.,
Curl Curl NSW

CLIENT
Mr. A. Fulwaria

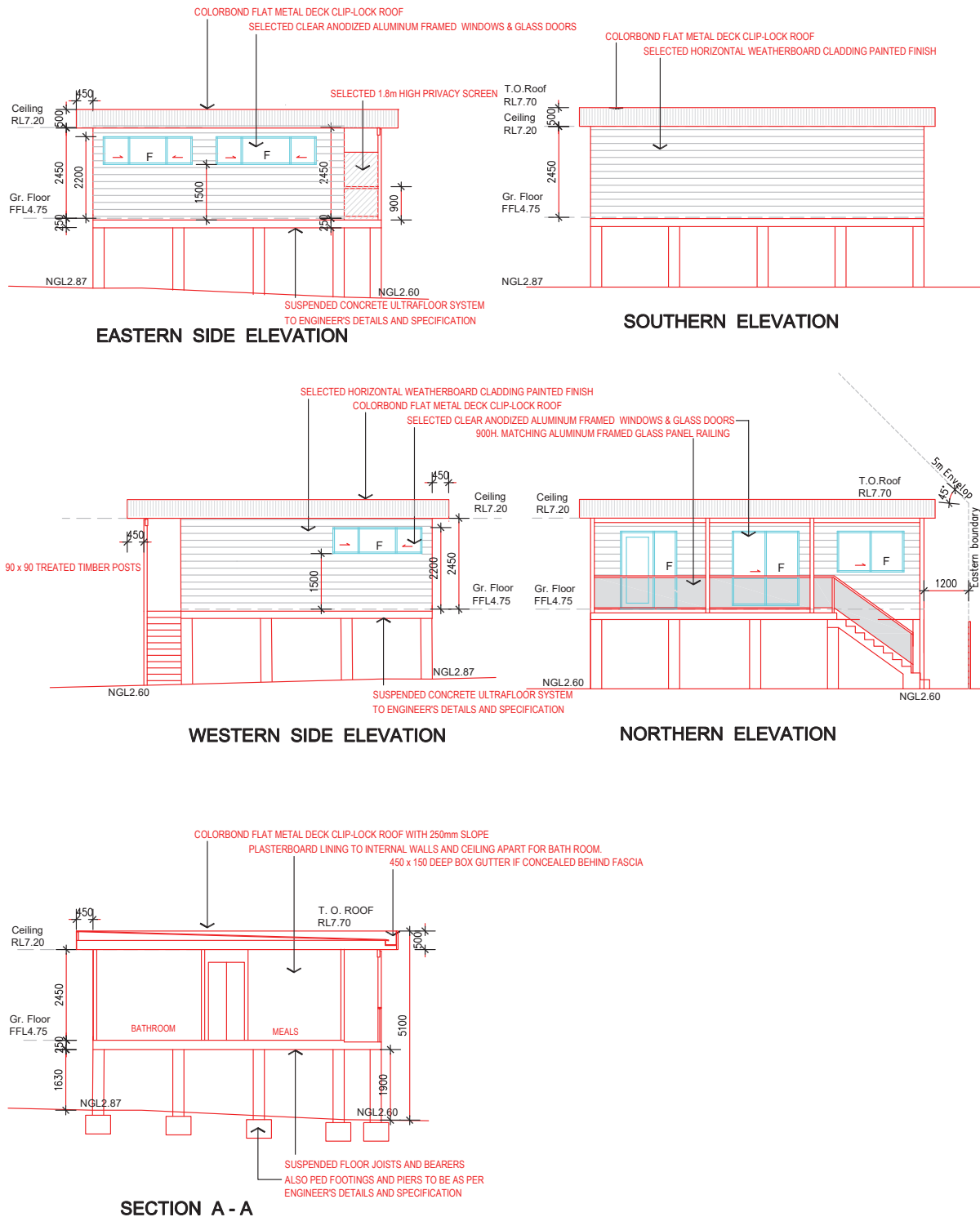
DRAWN SCALE **DATE**
AJ 1:200 2023 08 08

DRAWING No: **ISSUE**
PR023.11, Page 1 B

SABTON & SON
BUILDING DESIGNERS AND ENGINEERS

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Tel: (612) 4567 2002



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CLIENT
Mr. A. Fulwaria

DRAWN SCALE DATE
AJ 1:100 2023 08 08

DRAWING No: ISSUE
PR023.11, Page 3 B

SABTON & SON
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5.0 NON PUBLIC MEETING ITEMS

ITEM 5.1 **DA2023/0588 - 161 RIVERVIEW ROAD - AVALON BEACH - CONSTRUCTION OF AN INCLINATOR**

AUTHORISING MANAGER **Steve Findlay**

TRIM FILE REF **2023/676544**

ATTACHMENTS **1** [↓](#) **Assessment Report**
2 [↓](#) **Site Plan & Elevation**
3 [↓](#) **Clause 4.6**

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Limited Development on Foreshore Area Development Standard of Clause 7.8 pursuant to clause 4.6 of PLEP 2014 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2023/0588 for construction of an inclinor on land at Lot PO 11544, 161 Riverview Road, AVALON BEACH and Lot 1 DP 1282914, 161 Riverview Road, AVALON BEACH subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0588
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Responsible Officer:	Dean Pattalis
Land to be developed (Address):	Lot PO 11544, 161 Riverview Road AVALON BEACH NSW 2107 Lot 1 DP 1282914, 161 Riverview Road AVALON BEACH NSW 2107
Proposed Development:	Construction of an inclinator
Zoning:	C4 Environmental Living W1 Natural Waterways
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	James Anthony Craven
Applicant:	Robert Brown

Application Lodged:	30/05/2023
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:	1
Clause 4.6 Variation:	7.8 Limited development on foreshore area
Recommendation:	Approval

Estimated Cost of Works:	\$ 462,000.00
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EXECUTIVE SUMMARY

This development application seeks consent for the construction of an inclinator.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to departure from a non-numerical development standard, being Clause 7.8 Limited Development on Foreshore Area under the PLEP 2014.

Critical assessment issues include the Clause 4.6 request to vary the provision under Clause 7.8, as

well as the side setback variation and amenity controls prescribed under C1.19 Incline Passenger Lifts and Stairways of the P21 DCP.

During the course of the assessment, the original scheme was amended to delete the waterway access pathway and stairs, so that access to the waterfront would rely on the inclinator only and an existing track.

The 4.6 variation is considered to be well founded and is supported as the foreshore area has an extreme slope (87%) and the installation of the proposed inclinator will have significantly less site disturbance (excavation footings and retaining walls) and visual impact than the previously proposed stairs. Under these circumstances the inclinator is considered appropriate in the foreshore area.

One (1) submission was received during the community notification period and the concerns raised predominantly relate to non-compliance with the side setback control under P21 DCP, tree protection and visual and acoustic privacy.

This report concludes with a recommendation that the NBLPP support the Clause 4.6 variation and grant approval to the development application, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The development application proposes the construction of a new inclinator at the northern boundary of the allotment, to provide foreshore access from the existing dwelling.

Amended Plans

Amended plans and supporting information was provided during the assessment process, including an amended architectural master set which deleted the originally proposed new foreshore pedestrian pathway from the application and therefore making the inclinator the only proposed works.

Furthermore, the applicant provided an updated Clause 4.6 Report addressing the non-compliance of the inclinator with Clause 7.8 Limited Development in the Foreshore Area PLEP 2014 and specifically addressing the environmental planning grounds associated with the non-compliance.

The amended information resulted in a scaling down of the proposal and a reduction in environmental impacts, 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 Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - C1.6 Acoustic Privacy
Pittwater 21 Development Control Plan - C1.19 Incline Passenger Lifts and Stairways
Pittwater 21 Development Control Plan - D1.9 Side and rear building line

SITE DESCRIPTION

Property Description:	Lot PO 11544 , 161 Riverview Road AVALON BEACH NSW 2107 Lot 1 DP 1282914 , 161 Riverview Road AVALON BEACH NSW 2107
Detailed Site Description:	<p>The site is at 161 Riverview Road, Avalon and legally described as Lot 2 in Deposited Plan 19396.</p> <p>The site is located on the western side of Riverview Road.</p> <p>The site is a relatively long, allotment of irregular shape. The site is zoned C4 Environmental Living.</p> <p>The topography slopes steeply at the rear from the dwelling to the waterway. There is a level difference of approximately 20.4m between the rear of the dwelling house and the foreshore interface/rear boundary (RL 22 to RL 1.6).</p> <p>The site contains an existing unrestored walking track from the rear of the dwelling to the foreshore, as well as an existing inoperative inclinor track at the front portion of the site which is interrupted by the location of the existing on-site development.</p> <p>The local development and foreshore character comprises varied building setbacks, vegetated hillside and marine interface structures.</p>

Map:



SITE HISTORY

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

Application **DA2023/0335** for Construction of a boatshed and deck, timber jetty, skid ramp and pontoon (Approved NBLPP 04/10/2023)

Application **DA2023/0035** for Construction of a boatshed and decking (Withdrawn 22/02/2023)

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p>Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p>Clause 29 of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p>Clauses 36 and 94 of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to further justification to be provided regarding the acceptability of the proposed development in the context of Clause 4.6 PLEP 2014 as well recent similar applications that have been determined by Council. Further information was formally accepted by Council on 15 September 2023.</p> <p>Clause 61 of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p>Clauses 62 and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p>Clause 69 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.</p> <p>Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 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 process council is in receipt of 1 submission/s from:

Name:	Address:
Mr Geoffrey Howard Lee Mrs Yin Lee	163 Riverview Road AVALON BEACH NSW 2107

One (1) submission was received during the community notification period and the following concerns were raised:

- **Side setback distance**

Comment

The adjoining property owner raised concern regarding the northern side setback distance of the proposed inclinator carriage which is numerically non-compliant with clause C1.19 P21 DCP. A full merit discussion is included within this assessment report under the section "Clause C1.19", which determines that the location of the inclinator is constrained by existing on-site development and natural features of the site. Notwithstanding the non-compliance, the proposed inclinator is not considered to result in an adverse visual or amenity impact, subject to conditions of consent to minimise impacts.

- **Visual and acoustic privacy**

Comment

Concern was raised regarding the impacts of the proposal upon the visual and acoustic privacy of the adjoining property to the north, particularly in the context of their lower ground and ground floor bedrooms. Whilst these particular bedroom areas of the dwelling are considered low-trafficable areas that do not require specific privacy mitigation measures, the northern adjoining site contains a rear

pool area and attached deck which is a principal private open space area, in close proximity to the line of the proposed inclinator. As a result, and as discussed under Clause C1.19, suitable conditions of consent are recommended for the proposed inclinator to be affixed with a privacy screen, as well as noise levels associated with the inclinator motor to be consistent with the requirements of the above clause.

- **Vegetation protection**

Comment

The adjoining property owner raised concern regarding impacts of the proposal upon existing boundary vegetation and the spotted gum trees. An Arboricultural Impact Assessment (prepared by Growing My Way) is provided with the application and has been reviewed by Council's Landscape Officer and Biodiversity Officers, who have raised no objection to the proposal, subject to conditions, including arboricultural supervision of the works be undertaken during the proposed works.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulfate)	<p>SUPPORTED SUBJECT TO CONDITIONS</p> <p>Mapped as Class 1 and 5 Acid sulfate.</p> <p>White Geotechnical Group 12 April 2023 advise:</p> <p>Acid Sulfate Soils</p> <p>The clays encountered throughout the ground testing (performed as part of our geotechnical report) are in situ and derived from the Newport Formation Shales. This formation is Middle Triassic in age and is much older than the Holocene sediments from which acid sulphates are generally derived from on the east coast. Additionally, Newport Formation Shale does not contain high concentrations of sulphides which can provide the required iron concentrations for acid generation in older bedrock.</p> <p>The ground materials underlying the site do not generate acid sulfate or potential acid sulfate conditions and so a preliminary acid sulfate assessment is not required.</p> <p>Environmental Health support the proposal with conditions</p>
Landscape Officer	<p>SUPPORTED SUBJECT TO CONDITIONS</p> <p>The application seeks consent for construction of an inclinator and stairway.</p> <p>The Arborist's report prepared by Growing My Way is noted.</p> <p>The Report indicates that no trees are affected by the proposed works subject to Arboricultural supervision during works.</p>

Internal Referral Body	Comments
	<p>All rock outcrops are to be retained. It is noted that the lower portion of the site is mapped as Category 1 Very High for potential sites of Aboriginal significance. As such, I would also defer to comments from the AHO.</p> <p>The Site is noted to be mapped on the Biodiversity Values Map under the Biodiversity Conservation Act. As such, matters relating to Biodiversity (which will also include understorey, ground covers and fauna) are deferred to Council's Bushland and Biodiversity section for comment.</p> <p>No objections are raised with regard to landscape issues subject to conditions.</p>
NECC (Bushland and Biodiversity)	<p>SUPPORTED SUBJECT TO CONDITIONS</p> <p>The proposal seeks approval for construction of an inclinator and stairway.</p> <p>The comments in this referral relate to the following applicable controls and provisions:</p> <ul style="list-style-type: none"> • NSW Biodiversity Conservation Act 2016 • NSW Biodiversity Conservation Regulation 2017 • SEPP (Resilience and Hazards) 2021 - Chapter 2 Development within the coastal environment • Pittwater LEP 2014 - Clause 7.6 Biodiversity Protection • Pittwater 21 DCP - Clause B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community <p>Portions of the site are identified on the Department of Planning and Environment's Biodiversity Values Map (BV Map). Under the NSW Biodiversity Conservation Act, any removal of native vegetation from within mapped areas will trigger the Biodiversity Offsets Scheme (BOS) and the requirement for a Biodiversity Development Assessment Report (BDAR).</p> <p>However, the submitted plans and documentation indicate that the proposed works are located outside of the BV Map area and therefore will not trigger entry into the BOS.</p> <p>The proposal has been submitted with an Arboricultural Impact Assessment that has confirmed that no trees will be impacted by the proposed works.</p> <p>Council's Biodiversity referrals team raise no objections, subject to conditions.</p>

Internal Referral Body	Comments
NECC (Coast and Catchments)	<p>SUPPORTED SUBJECT TO CONDITIONS</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Resilience and Hazards) 2021 (section 2.10, 2.11 & 2.12); • State Environmental Planning Policy (Biodiversity & Conservation) 2021 • Relevant LEP and DCP clauses. <p>State Environmental Planning Policy (Resilience & Hazards) 2021</p> <p>The subject land has been included on the 'Coastal Environment Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021. Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA.</p> <p>Comment:</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by BBF Town Planners dated May 2023, the DA satisfies the objectives and requirements of Part 7, Clause 7.8 of the Pittwater LEP 2014.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021.</p> <p>Pittwater LEP 2014 and Pittwater 21 DCP</p> <p>Development on Foreshore Area</p> <p>A section of the subject property is within the foreshore building line. Part 7, Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014 applies for any development within the foreshore area</p> <p>Proposed development works are located on Crown land below the Mean High Water Mark. Hence, Section D15.12: Development seaward of mean high water mark in Pittwater 21 DCP applies to the proposed development.</p> <p>Any fixed electrical or other items of the Inclined Lift infrastructure that could be damaged by inundation or wave runup, such as the controls, will be located above the EPL of 2.81m AHD or waterproofed below that level.</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by BBF Town Planners dated May 2023, the DA satisfies the objectives and requirements of Part 7, Clause 7.8 of the Pittwater LEP 2014.</p>

Internal Referral Body	Comments
	<p>Estuarine Hazard Management</p> <p>The subject property has also been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site. In accordance with the Pittwater Estuary Mapping of Sea Level Rise Impacts Study (2015), a base estuarine planning level (EPL) of RL 2.72m AHD applies at the subject site.</p> <ul style="list-style-type: none"> • The inclined lift will be designed so that the carriage docks temporarily at the bottom landing and then automatically returns to the top station after 10 mins, thus meaning that the carriage would not be inundated in a coastal storm due to being left unattended at the bottom landing. • The materials selected are inundation compatible below the EPL of 2.81 and suitable for the marine environment. There are allowances for buoyancy and wave forces on fixed components of the inclined lift. <p>All these proposed works are consistent with Clause 7.8(2)(b).</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by BBF Town Planners dated May 2023, the DA satisfies the objectives and requirements of Part 7, Clause 7.8 of the Pittwater LEP 2014.</p> <p>No other coastal issue identified.</p>
NECC (Riparian Lands and Creeks)	<p>SUPPORTED</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Resilience and Hazards) 2021; • Relevant LEP and DCP clauses; and • Northern Beaches Water Management for Development Policy <p>The site abuts Pittwater estuary and as such the development must not significantly impact on the biophysical, hydrological or ecological integrity of the estuary, or the quantity and quality of surface and ground water flows that it receives.</p> <p>Geotechnical investigation indicates the possibility of encountering the water table. Any dewatering must meet council water quality requirements. If a significant amount of dewatering is required then</p>

Internal Referral Body	Comments
	<p>the applicant must contact catchment@northernbeaches.nsw.gov.au for advice on Council's groundwater dewatering permit prior to excavating.</p> <p>Appropriate sediment and erosion controls must be installed prior to any disturbance of soil on site and maintained until all work is complete and groundcover re-established.</p>
Parks, reserves, beaches, foreshore	<p>SUPPORTED</p> <p>The development site adjoins Pittwater foreshore that is located downslope of the property. All development works must ensure that surface sediment runoff and/or erosion is controlled, managed and contained within the site boundaries and prevented from travelling across the boundary and into the foreshore.</p> <p>No physical encroachments over the site boundaries are permitted, and structures and built elements are not permitted beyond the site boundaries.</p> <p>Existing public access to the foreshore is not altered by the proposed development and the development is not detrimental to the landscape character of the adjoining Reserve, and as such Parks, Reserves and Foreshores raise no concerns with the development proposal.</p>

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

provisions which the proposal is considered to be acceptable against.

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

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

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

- e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
- f) Aboriginal cultural heritage, practices and places,
- g) the use of the surf zone.

Comment:

The proposed development is not considered likely to cause an adverse impact on the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment, coastal environmental values and natural coastal processes, the water quality of the marine estate, native vegetation and fauna and their habitats, public open space or aboriginal cultural heritage. Council's Coast and Catchments Officer has also reviewed the application and raised no objection to approval, subject to recommended conditions.

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

Comment:

The development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (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 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

- 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 considered likely to cause an adverse impact on safe access to and along the foreshore, overshadowing, wind funnelling and the loss of views from public places to foreshores, the visual amenity and scenic qualities of the coast, including coastal headlands, or cultural and built environment heritage.

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 on that land or other land.

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

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

Comment:

The relevant provisions of any certified coastal management program that applies to the land have been considered.

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

Chapter 4 – Remediation of Land

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

Pittwater Local Environmental Plan 2014

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

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	1.4m (inclinator track - max.)	-	Yes

The proposal is consistent with the objectives of the C4 Environmental Living Zone. Details on each objective are provided under the Clause 4.6 Request to Vary a Development Standard.

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	No
7.10 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of Non-compliance

Development standard:	Limited Development on Foreshore Area
Requirement:	Foreshore Building Line
Proposed:	14.3m extension into Foreshore Area

Assessment of Request to vary a Development Standard

The following assessment of the variation to 7.8 Limited development on foreshore area development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

Clause 4.6 Exceptions to Development Standards

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

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

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

Comment:

7.8 Limited development on foreshore area development standard is not expressly excluded from the operation of this clause.

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act (cf previous s 5)

The objects of this Act are as follows:

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

Applicants Written Request

The applicants written request argues, in part:

- The steepness of the rear portion of the subject site and decayed state of the existing waterway access stairs necessitates the need for an inclinator
- New foreshore access stairs as an alternative form of development would result in an inferior planning outcome due to the topography and natural characteristics of the site.
- The existing immediate locality is characterised by similar forms of development

Planners Comments

It is agreed that the rear of the subject site is extremely steep, with a gradient of approximately 87% from the lower ground floor of the dwelling to the proposed lower inclinator landing. At present, access between the dwelling and the foreshore is serviced via an existing pedestrian stairway and ladder. The pathway is in a dilapidated state which is not conducive to safe and secure passage to the foreshore, thus necessitating a safer and more practical means of access.

The proposed development will not be out of character with the existing immediate locality and directly adjoining sites, as the presence of inclinators approved within the foreshore area is characteristic of the immediate locality. The proposed development will also not adversely impact upon public foreshore access or natural foreshore processes. Council's Coast and Catchments Officer has reviewed the application and raised no objection to approval, subject to conditions.

Furthermore, due to the very steep topography of the rear portion of the site, it is considered the construction of new foreshore access stairs as an alternative form of development would cover a significantly larger proportion of the site, with a greater visual impact and more extensive site disturbance associated with pier and footing and balustrade/handrail works. A slimline and low-lying inclinator is therefore considered a minimalist and better planning outcome in this regard.

The applicant's written request also notes that a recent proposal for an inclinator was refused by Council at a nearby allotment (DA2022/1548 - 137 Riverview Road, Avalon Beach). The differences between that application and the subject application is that the works are wholly contained within the residential zoned portion of the site, whereas part of the landing proposed in DA2022/1548 encroached within the waterway zone and constituted prohibited development. Additionally, alternate safe access between the dwelling and the foreshore is not currently provided at the subject site, noting the site under DA2022/1548 was already serviced by an updated alternate access pathway which formed part of the reasons for refusal.

Figure 1: Condition of existing on-site pedestrian foreshore access pathway



Figure 2: Condition of existing on-site pedestrian foreshore access pathway



Figure 3: Condition of existing on-site pedestrian foreshore access pathway



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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Limited development on foreshore area provision 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 provision, pursuant to 'Clause 7.8 Limited development on foreshore area' of the PLEP 2014 are:

(a) to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area,

Comment:

It is considered the proposed inclinator will not adversely impact the visual qualities of the foreshore area, noting that the track is slimline and limited in width, is located low to the ground and will be finished in dark and earthy tones to blend with surrounding landscape. The proposed inclinator is also considered to reasonably reduce site disturbance and avoid greater impacts upon vegetation compared to the construction of new stairs. Council's Coast and Catchment Officer has also reviewed the application and raised no objection to approval, subject to recommended conditions of consent.

(b) to ensure continuous public access along the foreshore area and to the waterway.

Comment:

The works are set back well above MHW and are wholly maintained within private property. Council's Parks and Reserves Officer has also reviewed the application and raised no objection to approval, citing that existing public access to the foreshore is not altered by the proposed development and the development is not detrimental to the landscape character of the adjoining Reserves.

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 development is considered to be low impact residential development in a visually sensitive waterfront location. The works support the existing dwelling providing for access to the properties waterfront

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

Comment:

The special ecological, scientific or aesthetic values of the site are considered to be retained. The inclinator will provide access to the properties waterfront which has significantly less physical and visual impact on the foreshore area.

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

Comment:

The proposed development is considered to be of a modest built form and scale that shall reasonably integrate with the landform and landscape.

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

Comment:

The proposed development is not considered to adversely impact any riparian and foreshore vegetation and wildlife corridors.

Conclusion

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

In addition, under the particular circumstances, being that the site contains a particularly steep topography (87% slope), does not contain an existing secure passage to the foreshore as well as the context of similar surrounding development in the immediate locality, the extent of the request is considered acceptable.

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Limited development in foreshore area provision is assumed by the Local Planning Panel.

7.8 Limited development on foreshore area

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

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

Comment:

The proposed development is for a new inclinor located inside the foreshore area prescribed by the Foreshore Building Line Map under PLEP 2014. An inclinor is not considered an exception under the

clause and is therefore subject to an assessment under Clause 4.6 PLEP 2014 which has been conducted under the relevant section within this report.

Furthermore, amended plans provided during the assessment process also proposed a new retaining wall structure inside the foreshore area as illustrated on Dwg No. B3.5. This structure is also not an exemption under the clause and has not been mentioned in the applicant's Clause 4.6 request, therefore a suitable condition of consent is recommended to delete this structure from the approved plans.

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

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

Comment:

A full assessment addressing the acceptability of the proposal in the context of the objectives of Clause 7.8 is included under the Clause 4.6 discussion within this report. The proposed development is considered acceptable in this circumstance.

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

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

Comment:

The proposed development will retain continuous public access to and along the foreshore. The proposed development does not impact upon any public access. The proposed development is acceptable in relation to the foreshore character and the existing environmental conditions.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	Unaltered	-	No but existing
Rear building line	Foreshore Building Line	14.3m extension into foreshore area	-	No - See LEP discussion
Side building line	2.5m (south)	Unaltered	-	Yes
	2m (Clause C1.19 PDGP 2014)	0.4m (min. - carriage)	80%	No
Building envelope	3.5m	Unaltered	-	Yes
	3.5m	Unaltered	-	Yes
Landscaped area	60%	Unaltered	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
C1.19 Incline Passenger Lifts and Stairways	No	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes
D1.5 Building colours and materials	Yes	Yes
D1.8 Front building line	Yes	Yes
D1.9 Side and rear building line	Yes	Yes
D1.11 Building envelope	Yes	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D1.20 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

C1.5 Visual Privacy

Comment

The privacy impacts associated with the proposed inclinator are addressed under the section addressing clause C1.19, and are appropriately resolved through conditions of consent.

In this regard, the privacy impacts are satisfactory.

C1.6 Acoustic Privacy

Comment

The acoustic privacy impacts associated with the proposed inclinator are addressed under the section addressing clause C1.19, and are appropriately resolved through conditions of consent.

In this regard, the acoustic impacts are satisfactory.

C1.19 Incline Passenger Lifts and Stairways

Description of Non-compliance

The control requirements are as follows:

Incline passenger lifts and stairways shall:

- i) be designed and located so they do not involve excessive excavation, or the removal of natural rock or trees, and*
- ii) be erected as near as possible to the ground level (existing) of the site, and shall not involve the erection of high piers or visible retaining structures, and*
- iii) be located and designed to minimise the effects of noise from the motor and overlooking of adjoining dwellings, and*
- iv) be painted to blend in with surrounding vegetation and screened by landscaping and*

- v) be set back two (2) metres from the side boundary to the outer face of the carriage*
- vi) be located wholly on private land, and*
- vii) have a privacy screen where there is a direct view within 4.5m to a window of a habitable room of another dwelling.*

The noise level shall not exceed 60dB(A), when measured one metre from any adjoining premises.

Comment

- i) The proposed inclinator is designed to minimise its impact on the natural landscape noting it does not involve excessive excavation, or the removal of natural rock or trees.
- ii) Due to the undulating topography the height of the proposed inclinator is variable. The proposed inclinator is as near as possible to the ground level being approximately 200mm-1.4m above the ground level, does not involve the erection of high piers or visible retaining structures.
- iii) The line of the proposed inclinator is generally sufficiently spatially separated from the principal living areas and private open space of the adjoining property to the north, with the exception of a swimming pool and attached deck area of the adjoining northern property. Suitable conditions of consent are therefore recommended to require privacy screening to the inclinator carriage and to minimise noise disturbance caused by the motor.
- iv) A condition is recommended requiring that the external colours and materials of the development be dark and earthy tones consistent with the surrounding landscape. Due to the limited side setback to the existing dwelling, the provision of new boundary screen planting is not reasonably achievable in this case, however there is not considered to be any discernible impact on the vegetative character of the existing boundary vegetation.
- v) The line of the inclinator is dictated by the footprint of the existing dwelling on the site. The outer face of the proposed inclinator carriage is set back approximately 400mm from the side boundary. The minimum 2m northern side setback to the existing dwelling means that the provision of a 2.0m side setback to the outer face of the carriage is not feasible in this case, as a suitable separation between the dwelling and the inclinator carriage is also required for safe and satisfactory operation of the inclinator. Furthermore, any relocation of the proposed inclinator to the southern side boundary is also restricted by the setback of the existing dwelling whilst that boundary is also characterised by existing rock outcrops and spotted gum trees, as well as an approved boatshed located at the foreshore.
- vi) The inclinator is located wholly within the subject site.
- vii) A condition is recommended requiring privacy screening be provided to the outer face of the carriage.

Merit Consideration

With regard to the consideration for a variation, the proposed development is considered against the underlying outcome of the control as follows:

- *Incline passenger lifts and stairways that cause minimal visual and acoustic disturbance to the environment and neighbours.*

Comment:

As discussed above, the site constraints limit the ability of the proposal to comply with the 2m setback control prescribed by subclause (v). Despite the numerical non-compliance, the proposal, as conditioned, is not considered to cause unreasonable visual or privacy impacts to the natural environment or adjoining properties.

Based on the above assessment it is concluded that the proposed inclinor is **supported** on merit, subject to conditions.

D1.9 Side and rear building line

Comment

The proposed inclinor is subject to the side setback control prescribed by Clause C1.19 P21 DCP, whilst the rear building line is subject to the Foreshore Building Line Map under PLEP 2014.

The merit considerations of the proposed side and rear setback have been discussed under the relevant sections within this assessment report.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$4,620 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$462,000.

CONCLUSION

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

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

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

conditions contained within the recommendation.

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify a contravention of Clause 7.8 Limited Development on Foreshore Area has adequately addressed and demonstrated that:

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

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

PLANNING CONCLUSION

This revised proposal, for the construction of a new inclinator only, has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to the variation of a non-numerical development standard, being Clause 7.8 Limited Development on Foreshore Area of the PLEP 2014.

The concerns raised in the single objection received have been addressed under the relevant sections of this report and are resolved by way of suitable conditions of consent recommending amendments to the approved plans which protect visual and acoustic amenity.

The proposal was amended during the course of the assessment, with the deletion of the new waterway access pathway and stairs, and updating of the Clause 4.6 variation.

The critical assessment issues related to the Clause 4.6 variation to the PLEP 2014, variation of the setback control under Clause C1.19 Incline Passenger Lifts and Stairways of the P21 DCP and impacts on residential amenity. These matters are addressed on their merits and are considered reasonable and acceptable in this circumstance that the site is extremely steep (87% slope) that construction of stairs as alternate access would have a greater impact on site and unique character of the locality and if approved this should be stated in the Reasons for Determination.

Overall, the amended proposal is a site responsive and minimalist design solution 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 represents the preferred and better planning outcome in the context of the site, which minimises the impacts on the site and the Pittwater waterway and responds to the significant physical constraints being its particularly steep topography and absence of any existing secure passage to the foreshore.

The proposal, as amended, 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 the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2023/0588 for Construction of an inclinator on land at Lot PO 11544, 161 Riverview Road, AVALON BEACH, Lot 1 DP 1282914, 161 Riverview Road, AVALON BEACH, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
B9.1	B	Inclinator Plan	Casey Brown Architecture	12 September 2023
B9.2	B	Inclinator Section	Casey Brown Architecture	12 September 2023
B3.3	B	West Elevations	Casey Brown Architecture	12 September 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Arboriculture Construction Impact & Preliminary Management Statement	-	Growing My Way	April 2023
Geotechnical Investigation (J4247A)	-	White Geotechnical Group	12 April 2023
Waste Management Plan	-	Rob Brown	5 April 2023

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

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

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

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

(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 \$4,620.00 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 \$462,000.00.

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

7. **Footing Design Near Trees to be Retained**

- a) Footing structural layout plans for the works including stairs and inclinator shall be developed in co-ordination with an Arborist with AQF minimum Level 5 qualifications in arboriculture, and a qualified Structural Engineer, following a tree root mapping investigation near existing trees to locate critical tree roots and recommend footing design and locations for the construction works.
- b) The Arborist shall review, comment, recommend design revision as required and approve the footing layout, to ensure the locations of footings will be manageable in terms of tree protection measures.
- c) The Arborist shall submit certification to the Certifier, that the locations of the footings are accepted.
- d) The agreed footing structural layout plans shall be submitted to the Principal Certifier for approval prior to the issue of a Construction Certificate.

Reason: Tree protection.

8. **No Clearing of Vegetation**

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

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

Reason: To protect native vegetation.

9. Erosion and Sediment Control Plan

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

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

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

Reason: To protect the receiving environment.

10. Amendments to the Approved Plans

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

- The outer (northern) face of the inclinator carriage shall be affixed with privacy screening up to a minimum height of 1.7 metres above the finished floor level of the carriage, consisting of either:
 - i) translucent glazing, or
 - ii) fixed panel or louver style construction with a maximum spacing of 20 millimetres.
- The inclinator rails and carriage shall be finished in dark colours that blend in with surrounding vegetation.
- The proposed retaining wall in the foreshore area is not approved under this consent and shall be deleted from the plans.

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. **Boundary Identification Survey**

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

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

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

13. **Structural Engineering for Estuarine Risk**

Structural engineering design for the development shall be prepared, with input as necessary from a chartered professional engineer with coastal engineering as a core competency, to ensure that for its design life (taken to be 100years unless otherwise justified and accepted by Council) the development is able to withstand the wave impact forces and loadings. The materials below the EPL need to take into account specific details from policy B3.7 Pittwater DCP.

The potential for component fatigue (wear and tear) should be recognised for the less severe, but more frequent, wave impact loadings.

Reason: To ensure structural engineering is prepared by an appropriately qualified professional

14. **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.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

15. **Project Arborist**

a) A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged prior to any commencement of works on site to provide tree protection measures in accordance with AS4970-2009 Protection of trees on development sites and the Arboriculture Construction Impact and Preliminary Management Statement dated April 2023 prepared by Growing My Way Tree Consultancy.

b) The Project Arborist shall be in attendance and supervise all works as nominated in the the Arboriculture Construction Impact and Preliminary Management Statement dated April 2023 prepared by Growing My Way Tree Consultancy

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

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

Reason: Tree protection.

16. Installation and Maintenance of Sediment and Erosion Control

Prior to commencement of works on site, sediment and erosion controls must be installed along the immediate downslope of the works area in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004).

The erosion controls shall be maintained in an operational condition until the development activities have been completed and the site fully stabilised. Sediment shall be removed from the sediment controls following each heavy or prolonged rainfall period. Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site.

17. Installation and Maintenance of Sediment and Erosion Control

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site

DURING BUILDING WORK

18. Requirement to notify about new Acid Sulfate Soils evidence

Any new information revealed during excavation works that has the potential to alter previous conclusions about Acid Sulfate Soils shall be immediately notified to the Council and the Principal Certifier and a report be obtained from a suitably qualified person. Any recommendations provided by the report are to be complied with during works.

Reason: To protect the environment.

19. 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.

20. Tree and Vegetation Protection

- a) Existing trees and vegetation shall be retained and protected, including:
 - i) all trees within the site not approved for removal, including trees and vegetation nominated for retention on the approved Plans,
 - ii) all trees and vegetation located on adjoining properties,
 - iii) all trees and vegetation within the road reserve.
- b) Tree protection shall be undertaken as follows:
 - i) tree protection shall be in accordance with the Arboriculture Construction Impact and Preliminary Management Statement dated April 2023 prepared by Growing My Way Tree Consultancy and 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 the 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 the 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 the 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 the 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, the 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 the 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.

21. Wildlife Protection

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

Reason: To protect native wildlife.

22. Protection of Habitat Features

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

Reason: To protect wildlife habitat.

23. Installation and Maintenance of Sediment and Erosion Controls

Council proactively regulates construction sites for sediment management.

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

Erosion and sediment controls are to be adequately maintained and monitored at all times,

particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: To protect the receiving environment.

24. **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.

25. **Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

26. **Geotechnical Issues**

All conditions outlined in Geotechnical Investigation prepared by White Geotechnical Group dated April 2023 are to be complied with and adhered to throughout development.

Reason: To ensure excavation, foundations, footings, retaining structures for the inclinometer is undertaken in an appropriate manner and structurally sound.

27. **Aboriginal Heritage**

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

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

Reason: Aboriginal Heritage Protection.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

28. **Condition of Retained Vegetation**

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

- a) compliance to any Arborist recommendations for tree protection generally and during excavation works,
- b) extent of damage sustained by vegetation as a result of the construction works,

- c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree and vegetation protection.

29. **No Weeds Imported On To The Site**

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

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

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

30. **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.

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

32. **Protection of Habitat Features**

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

Reason: To protect wildlife habitat.

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. **Dewatering Management**

Council proactively regulates construction sites for sediment management.

Discharge of groundwater or tailwater must achieve the following water quality targets in addition to any conditions/ documentation of this consent, any requirements of the General Terms of Approval/Controlled Activity permit issued by WaterNSW (if applicable), Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) (Blue Book), Council's

Compliance and Enforcement Policy and legislation including Protection of the Environment Operations Act 1997 and Contaminated Lands Act 1997.

Water Quality (<one hour of planned discharge)

Oil and grease, not visible

pH, 6.5-8.5

Total Suspended Solids (TSS), <50mg/L NTU from a meter/grab sample

NOTE: The correlation between NTU and TSS must be established by a NATA accredited laboratory prior to the commencement of dewatering activities.

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

Tailwater must be discharged to the nearest stormwater pit in accordance with Council's Auspec1 Design Manual and must not spread over any road, footpath and the like. Discharge to the kerb and gutter will not be accepted. If an alternative solution is required, you must contact Council's Catchment Team at catchment@northernbeaches.nsw.gov.au

Reason: Protection of the receiving environment

35. **Mechanical Plant**

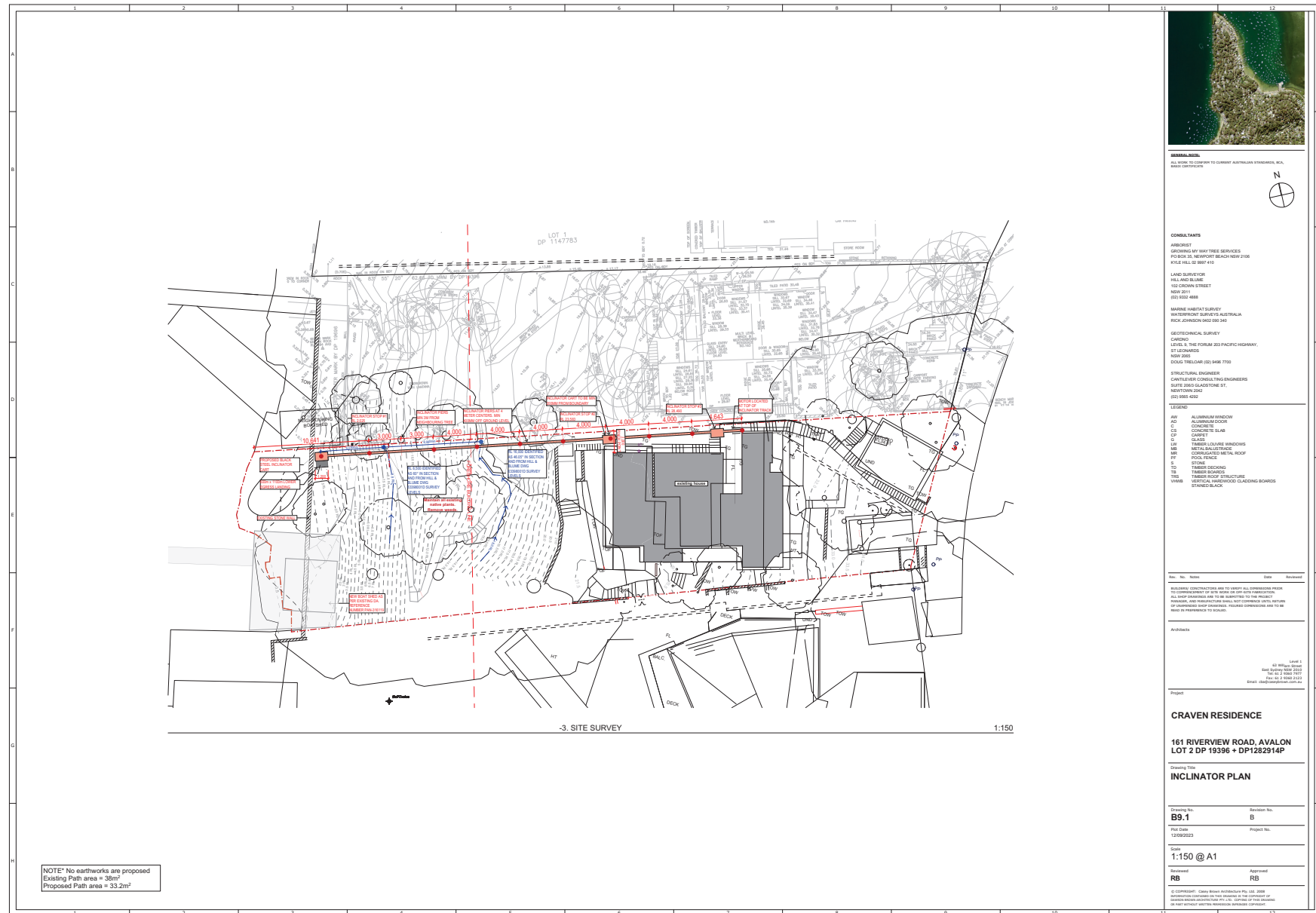
Any mechanical plant equipment, including the proposed inclinator motor/drive mechanism, shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

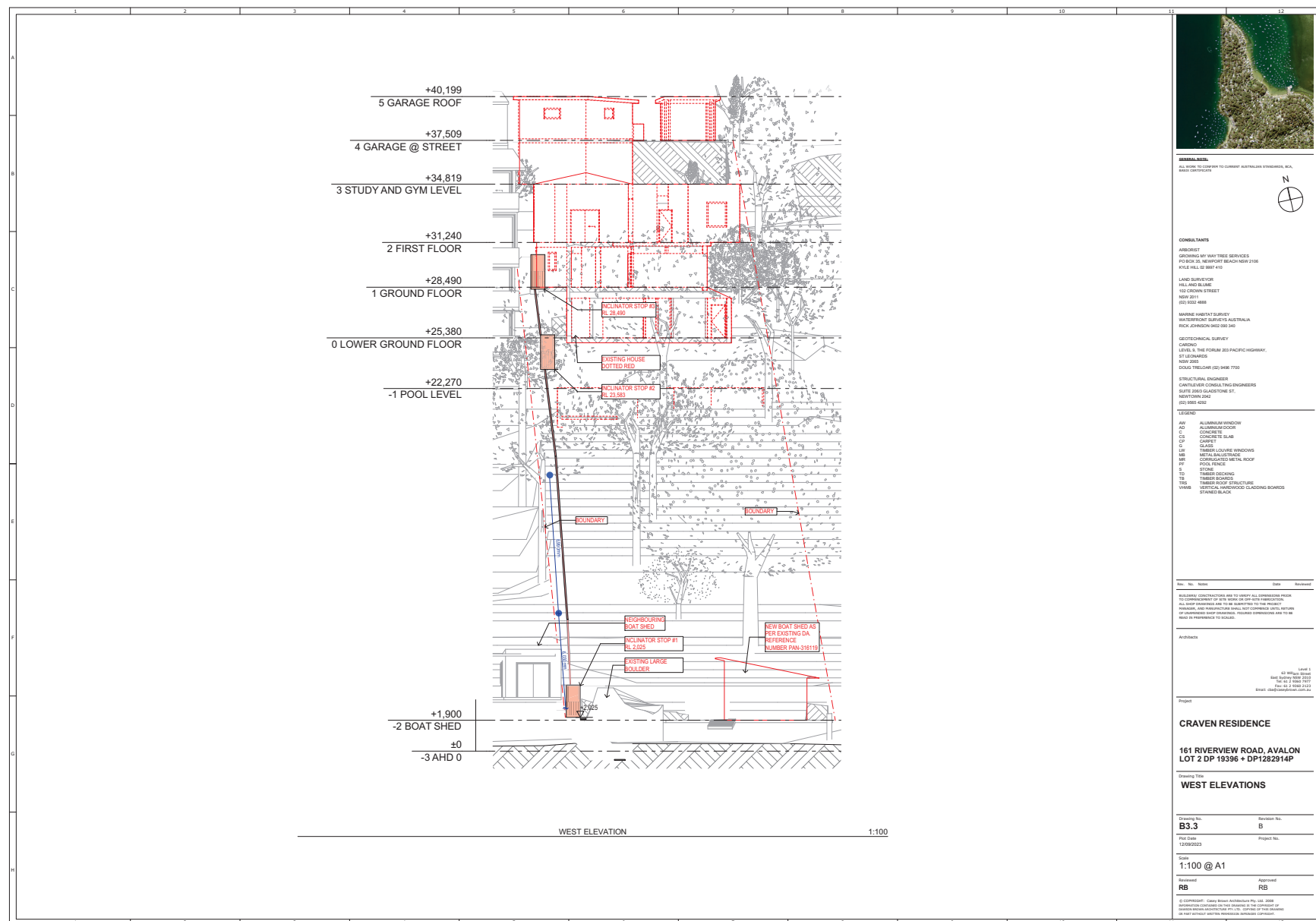
Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.

36. **Inclinator Only (No Duplicated Access)**

This consent is granted on the basis of foreshore access between the dwelling and the waterway being limited to the inclinator only as a new stair/pathway who cause significantly greater site disturbance. Approval has been granted on the basis of there being no new duplicated foreshore access, and hence no new constructed pathway/stair is suitable or appropriate on the basis of this primary means of foreshore access. The existing track to the waterfront should not be upgraded beyond basic maintenance and repair.

Reason: To ensure the foreshore character of Pittwater and the environmental amenity of the site are protected and enhanced.







*request to vary
a development standard*



REQUEST TO VARY A DEVELOPMENT STANDARD

261 RIVERVIEW ROAD
AVALON BEACH NSW 2107

September 2023

Prepared by Rebecca Englund
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northern beaches planning

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introduction

This request to vary a development standard is made by Northern Beaches Planning on behalf of James Craven in relation to a development application for the construction of an inclinor at 161 Riverview Road, Avalon Beach (**site**). This request is made pursuant to clause 4.6 of Pittwater Local Environmental Plan 2014 (**PLEP 2014**) and with regard to relevant case law.

standard to be varied

The foreshore building line bisects the site at a distance of approximately 20m from the Mean High Water Mark (**MHWM**) on the northern side boundary and approximately 17m from the MHWM on the southern side boundary, as shown on the Foreshore Building Line Map of PLEP 2014 (**Figure 1**).



Figure 1: Extract of Foreshore Building Line Map of PLEP 2014,
with the site bordered in yellow and the red line indicating the foreshore building line
Source: NSW Planning Portal Spatial Viewer

Clause 7.8(2) of PLEP 2014 states that development consent must not be granted for development on land within the foreshore area (being the land between the foreshore building line and the mean high water mark) except for the following purposes:

- (a) the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, but only if the development will not result in the footprint of the building extending further into the foreshore area,

(b) boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).

The foreshore building line control is a fixed standard relating to the siting of buildings on a site, consistent with the definition of a development standard as defined by the EP&A Act. As such, the provisions of clause 4.6 of PLEP 2014 can be applied.

Pursuant to clause 4.6(2) of PLEP 2014, consent may be granted for development even though the proposal contravenes a development standard prescribed by an environmental planning instrument. Whilst this clause does not apply to those standards expressly excluded from this clause, the foreshore building line development standard of clause 7.8 of PLEP 2014 is not expressly excluded and thus, the provisions of clause 4.6 can be applied in this instance.

extent of the proposed breach

The development application seeks consent for the construction of an inclinator, part of which is proposed within the foreshore area. The works within the foreshore area, being the works the subject of this clause 4.6 variation request, are highlighted in green on the extract of the Inclinator Plan prepared by Casey Brown Architecture, in **Figure 2** below.

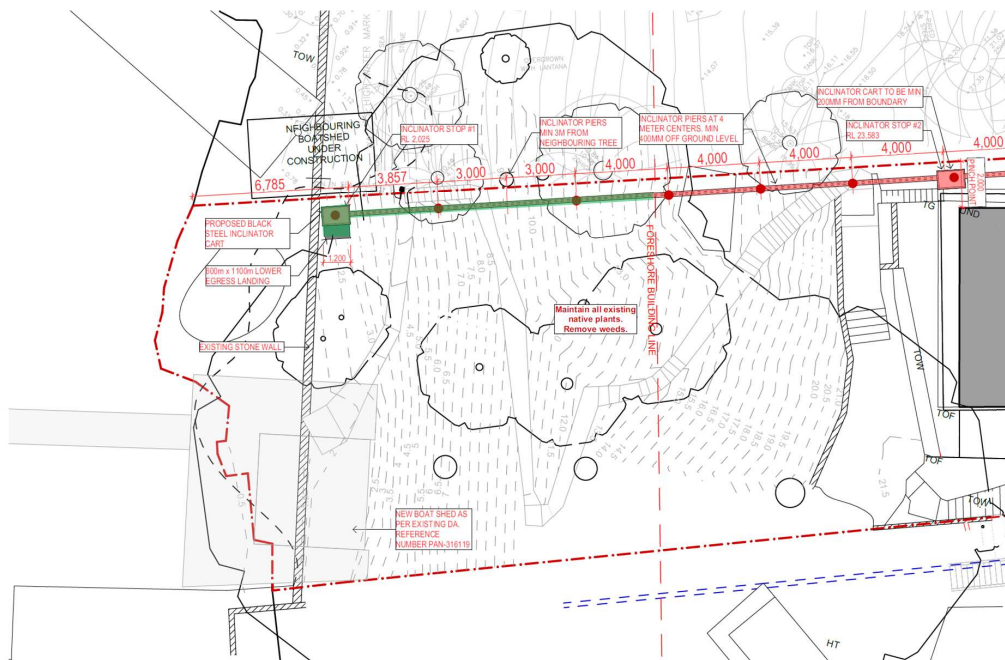


Figure 2: Extract of Inclinator Plan with works the subject of this clause 4.6 request highlighted in green
Source: Casey Brown Architecture with markup by NBP

Specifically, the works within the foreshore area include:

- a portion of the inclinator rail, approximately 14.25m in length,
- three (3) footings,
- inclinator landing.

unreasonable or unnecessary

Pursuant to clause 4.6(4) of PLEP 2014, consent can only be granted if the consent authority is satisfied that the applicant's written request to vary the development standard has addressed the criteria of clause 4.6(3) of PLEP 2014. Clause 4.6(3)(a) of PLEP 2014 requires the applicant to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

In accordance with the decision of the NSW LEC in the matter of *Wehbe v Pittwater Council* [2007] NSWLEC 827, one way in which strict compliance with a development standard may be found to be unreasonable or unnecessary is if it can be demonstrated that the objectives of the standard are achieved, despite non-compliance with the development standard.

The proposed works within the foreshore area are consistent with the objectives of the foreshore building line development standard, as prescribed by clause 7.8(1) of PLEP 2014, as follows:

1. *to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area,*

Comment: The term "natural foreshore processes" is not defined by PLEP 2014 but can reasonably be assumed to relate to natural processes such as wave action, tidal inundation, and erosion that occur along foreshore areas.

The site is identified as being subject to wave action and tidal inundation on the Estuarine Hazard Map of P21 DCP. The proposal has been referred to Council's Coast and Catchment Team in relation to the consideration of estuarine hazards, and no concern was raised in relation to the location or design of the proposed inclinator, or the development application in general.

The application has also been referred to Council's Riparian Team, who considered the proposal with regard to potential impacts on the biophysical, hydrological or ecological integrity of the Pittwater Waterway, and the quantity and quality of surface and ground water flows that it receives and raised no concern in this regard.

PLEP 2014 does not identify or describe the significance or amenity of the foreshore area, and in particular, there is nothing to suggest that the foreshore area at the subject site has any particular historic, scientific, cultural, social, archaeological or architectural, natural or aesthetic significance.

Nonetheless, Council can be satisfied that the proposed inclinator rail will not adversely impact the visual qualities of the foreshore area, noting that the track is limited in width, is located low to the ground and will be finished in dark and earthy tones to blend with surrounding vegetation.

The visual impact of the proposed inclinator rail is also significantly less than other types of development that are expressly permitted within the foreshore area, including waterway access stairs. In this respect, the project architects have prepared elevations to compare the visual impact of the proposed inclinator (**Figure 3**) to that associated with potential waterway access stairs constructed to contemporary standards (**Figure 4**), noting that the existing foreshore access arrangements include do not comply with the relevant provisions of the NCC/BCA.

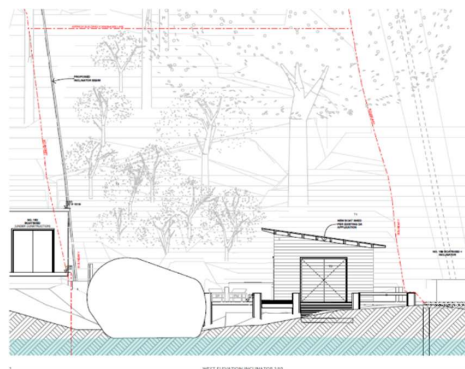


Figure 3: West Elevation of proposed inclinator
Source: Casey Brown Architecture

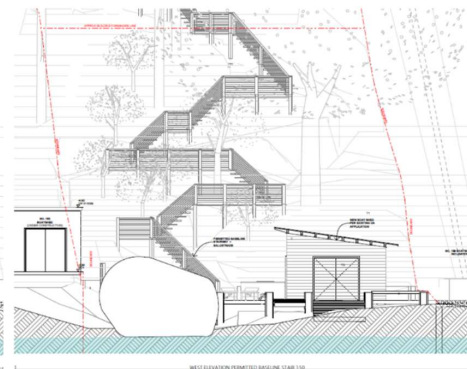


Figure 4: West Elevation of potential waterway access stairs
Source: Casey Brown Architecture

The proposed inclinator has been sited to avoid adverse impacts upon vegetation and disturbance of rock outcrops, with a significantly reduced footprint and level of site disturbance compared to waterway access stairs. It is also relevant to note that the proposed inclinator has also been supported by Council's Biodiversity and Landscape Officers, who support the application noting the lack of adverse impacts upon the landscaped character and biodiversity values of the site.

Overall, the consent authority can be satisfied that the proposed development will not impact on natural foreshore processes or affect the significance and amenity of the foreshore area.

2. *to ensure continuous public access along the foreshore area and to the waterway.*

Comment: The works are set back well above MHWM and are wholly maintained within private property.

It is noted that this objective applies to all land within the foreshore area and may not be relevant to each individual site. In consideration of all land within the foreshore area, the requirement for public access along the foreshore area is considered to more appropriately relate to public reserves between the foreshore building line and the MHWM, noting that the

provisions of clause 7.8 of PLEP 2014 cannot confer a right for members of the public to pass onto private property.

Furthermore, consideration of this objective should also have regard individual circumstances of the site and in this respect, the topography of the land and structures on adjoining sites already restrict continuous access along the foreshore area.

As such, strict compliance with the foreshore building line development standard is unreasonable and unnecessary in the circumstances of this case.

sufficient environmental planning grounds

Clause 4.6(3)(b) of PLEP 2014 requires the applicant to demonstrate that there are sufficient environmental planning grounds to justify contravention of the standard. The specific environmental planning grounds to justify the proposed contravention of the foreshore building line standard are as follows:

1. Topography & Access

The rear of the subject site is extremely steep, with fall of approximately 23.48m from the lower ground floor of the dwelling (RL 25.38) to the proposed lower inclinator landing (RL 1.90) and a gradient of approximately 87%.

At present, access between the waterway and the dwelling is achieved via a narrow and meandering access path which includes steep stairs and a ladder. This existing access arrangement is substandard, unsafe and does not comply with relevant NCC/BCA provisions. The proposed inclinator seeks to provide safe and convenient access between the dwelling and the foreshore, to a standard that is consistent with contemporary standards and commensurate with foreshore access on surrounding and nearby properties.

Inclinator access will be particularly beneficial on this site in order to transport items between the dwelling and the waterfront area and to vessels berthed at the associated jetty, noting that moving items up and down the site is currently constrained by the existing access arrangements, particularly the ladder.

Access between the dwelling and the waterway via inclinator will also facilitate aging in place and allow the current occupants of the dwelling to remain on the site for longer, which is particularly important in the Northern Beaches LGA where there is a significantly higher percentage of the population over the age of 55.

It is also relevant to note that the provision of safe and contemporary access to the waterway afforded by an inclinator within the foreshore area was said to constitute sufficient environmental planning grounds in relation to a variation to clause 7.8 of PLEP 2014 at 182 McCarrs Creek Road (DA2022/0133) approved by the NBLPP in April of this year.

2. Orderly Development

As confirmed in *Stockland Development Pty Ltd v Manly Council* (2004) 136 LGERA 254, consistency in decision making is a fundamental objective to those who make administrative decisions.

Council has repeatedly approved the installation of inclinators within foreshore areas adjacent to the Pittwater Waterway, with numerous development consents for inclinators issued under the provisions of PLEP 2014. In fact, there have been at least 5 inclinators approved within the foreshore area of nearby properties in the last 5 years, and numerous others on sites adjacent to both the Pittwater Waterway and the ocean, including:

- DA2018/2051 and Mod2022/0342 at 135 Riverview Road, Avalon Beach
- DA2022/0281 at 167 Riverview Road, Avalon Beach
- DA2021/1522 at 189 Riverview Road, Avalon Beach
- DA2021/0256 at 26A Hudson Parade, Avalon Beach
- DA2019/0565 at 129 Riverview Road, Avalon Beach
- DA2018/2015 at 163 Riverview Road, Avalon Beach
- DA2022/1048 at 15 Sturdee Lane, Elvina Beach
- DA2022/1368 at 15 The Chase, Lovett Bay
- DA2022/0133 at 182 McCarrs Creek Road, Church Point
- DA2019/0534 at 271 Whale Beach Road, Whale Beach

Furthermore, there are at least 10 more properties along Riverview Road that have inclinators extending between the dwelling and the foreshore, including both immediately adjoining properties (159 and 163 Riverview Road).

It is noted that the need for consistent decision making in relation to inclinators within the foreshore area was raised by Northern Beaches Planning in relation to the determination of DA2022/1548, to which Council provided the following response:

“Council was in receipt of now superseded advice that inclinators constituted water access stairs and consistent with the exemption permitted by Clause 7.8”

However, whilst Council may no longer consider inclinators to be reasonably characterised as, or ancillary to, water access stairs, the provisions of clause 7.8 of PLEP 2014 remain the same. Irrespective of whether a clause 4.6 request to vary the foreshore building line development standard was required, Council still had to be satisfied of the matters prescribed by clause 7.8(3) of PLEP 2014 prior to granting consent to any development within the foreshore area. As such, in order to approve the 10 examples listed above, Council had to be satisfied that an inclinator within the foreshore area did not impact on foreshore access or natural foreshore processes or affect the significance and amenity of the foreshore area.

There is nothing that differentiates the proposed inclinator from those approved on nearby sites, with no change to the relevant legislation or any case law that would suggest that inclinators are now unacceptable within the foreshore area.

Furthermore, the approvals of the inclinators within the foreshore at 182 McCarrs Creek Road, 15 The Chase and 15 Sturdee Lane postdate this advice and were approved under the provisions of clause 4.6 of PLEP 2014, with the topography of the site and the need to provide safe and contemporary access to the foreshore found to be “sufficient environmental planning grounds” to justify variation of the foreshore building line development standard.

Whilst DA2022/1548 for the construction of an inclinator within the foreshore area at 137 Riverview Road was recently refused by Council, the subject application is distinguishable for the following reasons:

- The works proposed in the subject application are wholly maintained within the residential zoned portion of the site, whereas part of the landing proposed in DA2022/1548 encroached within the waterway zone and constituted prohibited development, and
- Alternate safe access between the dwelling and the waterway is not currently provided at the site, noting that part of Council’s reasoning for not supporting the inclinator proposed in DA2022/1548 was because a separate access path was already provided on the site. However, it is noted that this issue has never been advanced in any of the other 10 applications identified in this submission, each of which also have separate stair access.

3. Character

The presence of inclinators within the foreshore area is characteristic of the immediate locality. This is due to the topography of the land and a reasonable expectation to provide suitable and safe access to the foreshore and waterfront structures.

4. Better planning outcome

The works within the foreshore area associated with the proposed inclinator consist of a small inclinator pit, a narrow rail, a landing and three footings, which do not result in any adverse impacts upon the visual amenity of the site or the existing natural environment. In comparison, the construction of new water access stairs would cover a significantly larger proportion of the site, with a greater visual impact and more extensive site disturbance associated with countless footings.

Whilst water access stairs are specifically identified in the exceptions listed in clause 7.8(2)(b) of PLEP 2014, the proposed inclinator will have a lesser environmental impact and will result in a better planning outcome on the site.

Allowing for the development to appropriately respond to the Applicant’s circumstances and the individual context of the site, including the siting & levels of the existing dwelling and the steep terrain of the site, promotes good design and amenity of the built environment, and the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants, consistent with objects (g) and (h) of the EP&A Act.

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

Overall, there are sufficient environmental planning grounds to justify contravention of the foreshore building line development standard in this particular instance.

public interest

Under the provisions of clause 4.6(4)(a) of PLEP 2014, consent must not be granted to a proposal that contravenes a development standard unless the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for the zone in which the development is to be carried out.

As identified above, the proposed development is consistent with the objectives of the foreshore building line development standard. Furthermore, the proposal is consistent with the objectives of the C4 Environmental Living zone, as follows:

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

Comment: Aside from the site's inclusion in the Biodiversity Area on the Biodiversity Map of PLEP 2014, the site is not identified as having particular ecological, scientific, cultural or aesthetic values. Nonetheless, as confirmed by the supportive referral responses from Council's Landscape Officer, Development Engineer, Riparian Officer, Biodiversity Officer Coast and Catchment Team, the proposal is of low-impact and will not result in any adverse landscape, engineering, riparian, biodiversity or coastal impacts. The resultant development appropriately preserves the natural amenity of the site to a degree that is commensurate with nearby properties and other waterfront sites, noting that residential development is permitted on the land.

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

Comment: The proposed inclinators will not result in any adverse ecological, scientific, cultural or aesthetic impacts and inclinators that are ancillary to dwelling houses are permitted on the site.

- *To provide for residential development of a low density and scale, integrated with the landform and landscape and not visually prominent.*

Comment: The works are to be predominantly constructed on piers and posts, in order to minimise site disturbance and impacts to vegetation. The track is to be finished in dark colours, to ensure that it blends with the surrounding natural environment. The incorporation of an inclinators on a steeply sloping foreshore site will not be uncharacteristic or jarring in its waterfront setting, particularly noting the prevalence of other inclinators on nearby sites.

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

Comment: The proposed development has been designed to minimise impacts upon existing vegetation. As confirmed by Council's Landscape and Biodiversity Officers, the proposed inclinor does not result in any adverse impacts upon foreshore vegetation, foreshore habitat or wildlife corridors.

Council can be satisfied that the proposal is in the public's interest, in so far as it is consistent with both the objectives of the zone and the objectives of the foreshore building line development standard.

concurrence

Pursuant to clause 4.6(4) of PLEP 2014, development consent must not be granted to a development that contravenes a development standard unless the concurrence of the Secretary has been obtained.

The foreshore building line development standard is a non-numeric development standard. In accordance with the Local Planning Panels Direction issued by the Minister for Planning and Public Spaces, dated 30 June 2020, the concurrence of the Secretary can be assumed by the Northern Beaches Local Planning Panel.

others matters for consideration

Pursuant to clause 7.8(3) of PLEP 2014, consent must not be granted unless the consent authority is satisfied with respect to various matters. These matters are addressed, as follows:

- (a) *the development will contribute to achieving the objectives for the zone in which the land is located, and*

Comment: As discussed above, the proposed development is consistent with the objectives of the C4 zone.

- (b) *the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and*

Comment: The inclinor track, being a single rail extending down the site, is to be finished in dark colours that will blend with the surrounding vegetation. The track sits low to the site and will not be overly apparent when viewed from neighbouring properties or the waterway. Further, the lower platform structure will be largely screened by the foreshore rock outcrop and the boatshed at the adjoining property.

Consistent with the findings of the NSW LEC in the matter of *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191, to be compatible in an urban design context is to be

capable of existing in harmony together. The proposed inclinators will sit harmoniously in this specific context, and most observers would not find the visual impact of the proposed development to be offensive, jarring or unsympathetic in this context, particularly noting the existence of other inclinators and access structures within the foreshore area of nearby sites.

- (c) *the development will not cause environmental harm such as—*
- i. *pollution or siltation of the waterway, or*
 - ii. *an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or*
 - iii. *an adverse effect on drainage patterns, or*
 - iv. *the removal or disturbance of remnant riparian vegetation, and*

Comment: The proposed development will not cause environmental harm, as endorsed in the referral responses from Council's Development Engineers, Landscape Officer, Riparian Officer, Biodiversity Officer and Coast & Catchment Team.

- (d) *the development will not cause congestion or generate conflict between people using open space areas or the waterway, and*

Comment: The proposed development will not generate congestion or conflict in relation to use of open space areas or the waterway. The works are wholly maintained within private property.

- (e) *opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and*

Comment: The proposed development does not compromise continuous public access along the foreshore and to the waterway. As above, the works are wholly maintained within private property and do not extend into the public domain.

- (f) *any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and*

Comment: Aside from the site's inclusion in the Biodiversity Area on the Biodiversity Map of PLEP 2014, the site is not identified as having particular ecological, scientific, cultural or aesthetic values. Nonetheless, as confirmed by the supportive referral responses from all referral bodies, the proposal is of low-impact and will not result in any adverse landscape, engineering, riparian, biodiversity or coastal impacts. The resultant development appropriately preserves the natural amenity of the site to a degree that is commensurate with nearby properties and other waterfront sites, noting that residential development is permitted on the land.

- (g) *in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and*

Comment: Not applicable.

(h) *sea level rise, coastal erosion and recession, or change of flooding patterns as a result of climate change, have been considered.*

Comment: The proposal has been reviewed by Council's Coast & Catchment Team with regard to sea level rise, coastal erosion and recession, with no concerns raised in this regard.

Council can be satisfied of the matters listed in clause 7.8(3) of PLEP 2014.

conclusion

Overall, the consent authority can be satisfied that this written request has adequately addressed all relevant matters and that the provisions of clause 4.6 of PLEP 2014 have been met. As such, there is no jurisdictional impediment to the granting of consent in relation to the proposed variation of the foreshore building line development standard.



Rebecca Englund
B Arch Studies | M Plan | MPIA

Director | Northern Beaches Planning

ITEM 5.2	DA2023/1134 - 47 FLORENCE TERRACE, SCOTLAND ISLAND - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
AUTHORISING MANAGER	Adam Richardson
TRIM FILE REF	2023/676559
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan & Elevations 3 ↓ Clause 4.6

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Limited Development on Foreshore Area Development Standard of Clause 7.8 pursuant to clause 4.6 of PLEP 2014 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2023/1134 for alterations and additions to a dwelling house on land at Lot 359 DP 12749, 47 Florence Terrace, SCOTLAND ISLAND and Lot LIC 325191, 47 Florence Terrace, SCOTLAND ISLAND subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/1134
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Responsible Officer:	Stephanie Gelder
Land to be developed (Address):	Lot 359 DP 12749, 47 Florence Terrace SCOTLAND ISLAND NSW 2105 Lot LIC 325191, 47 Florence Terrace SCOTLAND ISLAND NSW 2105
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	C3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Mathew Kenneth Gardiner
Applicant:	Stephen Crosby & Associates Pty Ltd

Application Lodged:	22/08/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	28/08/2023 to 11/09/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	7.8 Limited development on foreshore area
Recommendation:	Approval

Estimated Cost of Works:	\$ 139,920.00
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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 Northern Beaches Local Planning Panel (NBLPP) as the proposal seeks to vary the non-numerical development standard under clause 7.8 Limited development on foreshore area of the Pittwater Local Environmental Plan 2014.

The 4.6 request for the non-compliance with Limited development on foreshore area development standard arises from the proposed works that are located below the foreshore building line. The

existing dwelling house is located wholly below the foreshore building line, and as such any proposed addition to that dwelling is located below the foreshore building line. The works that are located below the foreshore building line that require the 4.6 request include an elevated lightweight deck attached to the dwelling that will serve as the principal private open space of the dwelling, and a stormwater tank located beneath the deck.

It is important to note the proposed deck was previously approved under N0299/09 dated 20 November 2009, however the consent was not activated, and as such has lapsed.

The application was notified in accordance with Council's Community Participation Plan, and no submissions were received.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposed development comprises of the following works:

- Alterations and additions to existing dwelling house including new dining room, and new entry;
- Addition of rear deck; and
- Replacement of existing roof.

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 C3 Environmental Management
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils

Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area
Pittwater 21 Development Control Plan - D8.6 Side and rear building line
Pittwater 21 Development Control Plan - D8.8 Building envelope

SITE DESCRIPTION

Property Description:	<p>Lot 359 DP 12749 , 47 Florence Terrace SCOTLAND ISLAND NSW 2105</p> <p>Lot LIC 325191 , 47 Florence Terrace SCOTLAND ISLAND NSW 2105</p>
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the eastern side of Florence Terrace.</p> <p>The site is regular in shape with a frontage of 15.175 metres along Florence Terrace and a depth of 63.4 metres. The site has a surveyed area of 948.0m².</p> <p>The site is located within the C3 Environmental Management zone from PLEP 2014 and accommodates a dwelling house, outbuilding, and shed currently on the site.</p> <p>The site slopes from the front western boundary downwards to the rear eastern boundary over approximately 21 metres.</p> <p>The site contains lawn areas, mature trees, and plantings.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by one and two storey dwelling houses varying in architectural style and design. Directly to the east of the subject site is Pittwater Waterway.</p>

Map:



SITE HISTORY

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

N0193/06

Development Application for Additions and Alteration to the existing Dwelling.
Approved on 8 June 2006.

N0299/09

Development Application for alterations and additions to the dwelling.
Approved on 20 November 2009.

BC2023/0062

Building Certificate for Hinged Jetty Ramp and Floating Pontoon.
Approved on 13 July 2023.

DA2023/0311

Development Application for Demolition work and construction of two berthing areas.
Approved on 6 July 2023.

APPLICATION HISTORY

Following the preliminary assessment of the application, Council requested additional information on 3 October 2023 in relation to Clause 7.8 Limited development on foreshore area of Pittwater Local Environmental Plan 2014, Clause 4.6 Exceptions to development standards of Pittwater Local Environmental Plan 2014, and Clause D8.6 Side and rear building line of Pittwater 21 Development Control Plan. Further information was requested from Council's Bushland and Biodiversity Officer and Council's Landscape Officer in relation to proposed tree removal, and the Bushfire Report requirements surrounding the Asset Protection Zone.

Subsequently, the applicant submitted amended Master Plans, an amended Clause 4.6 written request, an amended Tree Assessment and Management Plan, and a Bushfire Report Addendum.

The amended plans constitute a reduced environmental impact and therefore, the application was not required to be re-notified, in accordance with the Northern Beaches Community Participation Plan (CPP).

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p>Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a recommended condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to Clause 7.8 Limited development on foreshore area of Pittwater Local Environmental Plan 2014, Clause 4.6 Exceptions to development standards of Pittwater Local Environmental Plan 2014, and Clause D8.6 Side and rear building line of Pittwater 21 Development Control Plan. Further information was requested from Council's Bushland and Biodiversity Officer and Council's Landscape Officer in relation to proposed tree removal, and the Bushfire Report requirements surrounding the Asset Protection Zone.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a recommended condition of consent.</p>

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application that included a certificate (prepared by Bushfire

Planning Services Pty Ltd, dated 14 August 2023) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as a recommended condition of consent. The proposed development is considered to satisfy the requirements set out in Section 4.14 of the Act.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 28/08/2023 to 11/09/2023 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
Environmental Health (Unsewered Lands)	<p>Supported - subject to conditions.</p> <p>This application is seeking approval for alterations and additions to a dwelling at 47 Florence Terrace, Scotland Island.</p> <p>The proposal is to enlarge the existing dwelling by adding an 11.2m² dining room on an existing deck and adding 0.8m² to the existing entrance.</p> <p>The works also include a deck across the eastern facade of the dwelling with a maximum depth of 3.5m in the centre and stepping back to 1.0m at either end.</p> <p>There are no additional bedrooms, bathrooms, laundry or kitchen proposed that would impact on the wastewater system.</p> <p>A wastewater assessment was prepared for the site, detailing modifications to the existing wastewater disposal system including an upgrade of the treatment system from the existing septic tank and pump out tank to a new AWTs, and 3 new sub-surface wastewater irrigation lines. A Wastewater Report prepared by Geological and Environmental Services Pty Ltd, dated November 2021.</p> <p>An Approval to Install was issued to the owners in June 2023 which was for an Eco-Septic Eco Pro Model AWTs with a disposal area of 3 absorption trenches.</p> <p>Environmental Health recommends approval subject to conditions.</p>
Landscape Officer	<p>Supported - subject to conditions.</p> <p>The proposal is supported with regard to landscape issues.</p> <p><u>Additional Information Comment 20/10/23:</u> The amended reports and plans are noted.</p> <p>No trees are proposed to be removed, and the Arborist is satisfied</p>

Internal Referral Body	Comments
	<p>that trees within the vicinity of the works can be retained and protected. All trees to be retained shall be protected in accordance with the recommendations outlined in the Arboricultural Impact Assessment, subject to the imposed conditions.</p> <p><u>Original Comment Summary:</u></p> <ul style="list-style-type: none"> further information was requested by Council's Bushland and Biodiversity team.
NECC (Bushland and Biodiversity)	<p>Supported - subject to conditions.</p> <p>Amended Comments - 19/10/2023 An amended Tree Assessment (Syncarpia Vegetation Management, September 2023) has been provided removing mention of the removal of Tree 5. No prescribed tree removal is required for the development. As such, the BOS is not triggered and a BDAR is not required.</p> <p>A letter has been prepared by the Bushfire Consultant (Bushfire Planning Services, October 2023) confirming that no vegetation removal other than the removal of Tree 5 is required for the Asset Protection Zone. The letter is to be amended to delete mention of the removal of Tree 5 as the Arborist has identified that it is not proposed for removal.</p> <p>It is noted that impacts to any native vegetation (including for APZ maintenance) within the area mapped as Biodiversity Values Map will require an application for development consent which must be accompanied by a Biodiversity Development Assessment Report prepared by an ecologist accredited in application of the NSW Biodiversity Assessment Method, unless otherwise approved under an existing development consent, Local Land Services Native Vegetation Panel permit, or Threatened Species License.</p> <p>Subject to these comments and conditions, no objections in relation to biodiversity.</p> <p>Original Comments - 30/08/2023 Council's Biodiversity referrals team have assessed the Development Application for compliance against the following applicable provisions:</p> <ul style="list-style-type: none"> Biodiversity Conservation Act 2016 Biodiversity Conservation Regulation 2017 Pittwater LEP 2014 cl. 7.6 Biodiversity Protection Pittwater 21 DCP cl. B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community Planning for Bushfire Protection 2019 SEPP (Resilience and Hazards) 2021 cl. 2.10 Development on land within the coastal environment area

Internal Referral Body	Comments
	<p>The Development Application seeks consent for alterations and additions to a dwelling house.</p> <p>Portions of the site are identified on the Department of Planning and Environment's Biodiversity Values Map (BV Map). Under the NSW Biodiversity Conservation Act 2016, any removal of native vegetation from within mapped areas will trigger the Biodiversity Offsets Scheme (BOS) and the requirement for a Biodiversity Development Assessment Report (BDAR).</p> <p>A Tree Assessment (Syncarpia Vegetation Management, August 2023) has been submitted with the application which identifies one prescribed tree for removal Tree 5 <i>Corymbia maculata</i>. Due to the location of Tree 5 within the BV Map area, its removal will trigger the BOS and the requirement for a BDAR.</p> <p>The Bushfire Risk Assessment (Bush Fire Planning Services, August 2023) has recommended that "<i>at the commencement of building works and in perpetuity the entire property shall be managed as an Asset Protection Zone in accordance with the requirements of Planning for Bushfire Protection 2019</i>". The direct removal of native vegetation as well as the facilitation of future vegetation clearing within the BV Map as a result of the establishment and maintenance of an APZ triggers the BOS. The Bushfire consultant has not confirmed if vegetation removal is required in order to achieve minimum requirements of an IPA in accordance with PBP. As such, the report is to be amended to include an assessment of whether native vegetation will require removal.</p> <p>Council's Biodiversity Referrals team will recommence assessment of the application when the following documentation is received:</p> <ul style="list-style-type: none"> • Updated Bushfire Report, and • BDAR - if the removal of Tree 5 is required and/or native vegetation removal is required for APZ establishment
NECC (Coast and Catchments)	<p>Supported - subject to conditions.</p> <p>The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Resilience & Hazards) 2021 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP.</p> <p>Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore Coastal Management Act 2016 is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p>

Internal Referral Body	Comments
	<p>State Environmental Planning Policy (Resilience & Hazards) 2021</p> <p>The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA.</p> <p>Comment:</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Stephen Crosby & Associates Pty. Ltd. dated 14 August 2023, the DA satisfies requirements under clauses 2.10, 2.11 and 2.12 of the SEPP R&H.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021.</p> <p>Pittwater LEP 2014 and Pittwater 21 DCP</p> <p>Estuarine Risk Management</p> <p>The subject property has also been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site.</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Stephen Crosby & Associates Pty. Ltd. dated 14 August 2023, the ground floor level for the proposed additions and alterations is above the applicable EPL of 2,7m AHD for the site.</p> <p>The proposed development is therefore able to satisfy the relevant estuarine risk management requirements of P21 DCP.</p> <p>Development on Foreshore Area</p> <p>A section of the subject property is within the foreshore building line. Part 7, Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014 applies for any development within the foreshore area.</p> <p>The existing 59m² single storey timber framed fibro clad dwelling stands on the site almost entirely below the Foreshore Setback Building Line (FSBL).</p> <p>The DA proposes to enlarge the existing dwelling by adding an 11.2m² dining room on an existing deck, and adding 0.8m² to the existing entrance.</p>

Internal Referral Body	Comments
	As assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Stephen Crosby & Associates Pty. Ltd. dated 14 August 2023 and supported by a Clause 4.6 variation request, the DA satisfies the objectives and requirements of Part 7, Clause 7.8 of the Pittwater LEP 2014.
NECC (Riparian Lands and Creeks)	<p>Supported - subject to conditions.</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Resilience and Hazards) 2021; • Relevant LEP and DCP clauses; and • Northern Beaches Council Water management for development policy. <p><u>Riparian</u> The proposed development must not significantly impact on the biophysical, hydrological or ecological integrity of receiving waters or the quantity and quality of surface and ground water flows that it receives.</p> <p><u>Seagrass and locality</u> The site is within the Pittwater Estuary and DPI mapped endangered Posidonia australis communities (threatened species schedules of the NSW Fisheries Management Act 1994), and as such the development must not significantly impact on the biophysical, hydrological or ecological integrity of Pittwater Estuary, or the endangered Posidonia australis communities.</p> <p><u>Sediment Management</u> Sediment and erosion controls must be installed prior to any disturbance of soil on site and maintained until all work is complete and groundcover re-established.</p>
Parks, reserves, beaches, foreshore	<p>Supported - without conditions.</p> <p>The property adjoins Pittwater waterway downslope. The alterations and additions are consistent with the foreshore character of surrounding properties. All development works must ensure that surface sediment runoff and/or erosion is controlled, managed and contained within the site boundaries.</p>
External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p>Supported - subject to conditions.</p> <p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of</p>

External Referral Body	Comments
	Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	<p>Supported - subject to conditions.</p> <p>Development Application No. DA2023/1134 Description: Alterations and additions to a dwelling house Address: 47 Florence Terrace SCOTLAND ISLAND</p> <p>Reference is made to the proposed development at the above area and Aboriginal heritage.</p> <p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.A503057_02 dated 31 July 2023).

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

SEPP (Transport and Infrastructure) 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 5.0 metres of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30 metres of a structure supporting an overhead electricity transmission line and/or within 5.0 metres 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 subject site is located within land identified as "coastal environment area". The proposed

development is not likely to cause adverse impact to items listed under Clause 2.10(1)(a-g) inclusive.

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

Comment:

The proposed development has been designed, sited, and managed to avoid an adverse impact to items listed under Clause 2.10(1)(a-g) inclusive.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

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

Comment:

The proposed development is not likely to cause an adverse impact to items listed under Clause 2.11(1)(a)(i-v) inclusive. The proposal has been designed, sited, and managed to avoid any adverse impacts as detailed under Clause 2.11(1)(a)(i-v) inclusive.

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 an increased risk of coastal hazards on the land or other land.

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

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

Comment:

There is no certified coastal management program applicable to the land.

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

Chapter 4 – Remediation of Land

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

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	6.2m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes

Clause	Compliance with Requirements
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	No
7.10 Essential services	Yes

Detailed Assessment

Zone C3 Environmental Management

The subject site is located in Zone C3 Environmental Management of Pittwater Local Environmental Plan 2014.

The proposal has been assessed against the objectives of zone as detailed below.

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

Comment:

The proposed development will not result in any adverse impacts to any special ecological, scientific, cultural, or aesthetic values.

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

Comment:

The proposed development will not result in any adverse impacts to the values as detailed above.

- ***To provide for residential development of a low density and scale integrated with the landform and landscape, and not visually prominent.***

Comment:

The proposed development will continue to provide a low density and scale that is integrated with the landform, and landscape, and will not result in visual prominence.

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

Comment:

The proposal will suitably retain riparian, foreshore vegetation, and wildlife corridors.

- ***To ensure the continued viability of ecological communities and threatened species.***

Comment:

The proposal will not impact upon any existing ecological communities, or threatened species.

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Limited development on foreshore area
Requirement:	Above Foreshore Building Line
Proposed:	Below Foreshore Building Line
Percentage variation to requirement:	Non-numerical development standard

The proposed development is highlighted in yellow, noting majority of the proposed works are located below the foreshore building line (see Figure 1). The proposed works that necessitate a Clause 4.6 written request include the rear deck addition, and stormwater tank located beneath the deck.

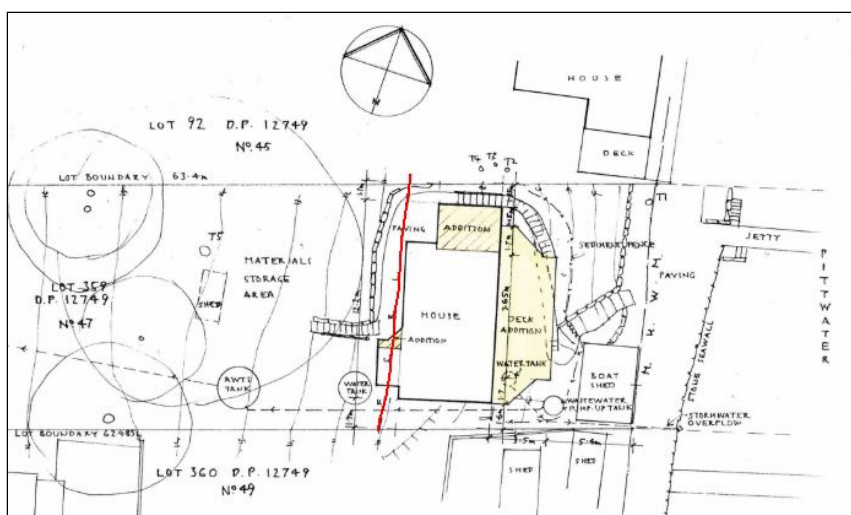


Figure 1. Site Plan (Foreshore Building Line in red)

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 7.8 Limited development on foreshore area development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

Clause 7.8 Limited development on foreshore area development standard is not expressly excluded from the operation of this clause.

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

grounds to justify contravening the development standard:

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

"Compliance with the development standard of Limited Development on the Foreshore Area is unreasonable and unnecessary in this case as the proposal does not set an undesirable precedent in terms of built form forward of the building line, does not impact on coastal processes or public areas and provide a high standard of amenity for the subject site without compromising the amenity of adjacent sites all public spaces.

The subject proposal does not offend any of the objectives under the C3 Environmental Management zone due to its sensitive design by integrating the proposal in a manner that is consistent with surrounding developments, not impacting upon any areas of special ecological, scientific, cultural or aesthetic values, maintains the low density visual catchment and retaining sufficient area within the foreshore area to provide vegetation and maintain/enhance wildlife corridors.

The development will assist in achieving the objectives for the zone and proposes a structure that will be compatible and consistent with the built form in the surrounding locality, not cause environmental harm, preserve continuous public access and will maintain the natural and aesthetic significance of the land and its surrounds."

It is agreed that the proposed development demonstrates consistency with the objectives of zone, and as such the proposed works are demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 7.8 – 'Limited development on foreshore area' of the PLEP 2014 are:

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

a) to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area,

Comment:

The proposed works including the rear deck, and stormwater tank located beneath the deck are located within the foreshore area. It is considered that these works will not impact upon the natural foreshore processes, or significantly affect the significance and amenity of the area. The proposed rear deck is an above ground structure, that will have limited impact upon the foreshore area, given the elevated nature of the deck. Furthermore, the existing dwelling house, and proposed works are suitably setback from the Mean High Water Mark, and as such will not result in any unreasonable dominance. It is important to note, the proposal is setback further than the existing dwelling houses on the adjoining sites, and as such it is considered that the proposal is compatible with surrounding development. Furthermore, Council's Landscape Officer, Bushland and Biodiversity Officer, Riparian Land and Creeks Officer, and Coast and Catchment Officer have all reviewed the proposal, and are supportable of the proposed development, subject to recommended conditions.

b) to ensure continuous public access along the foreshore area and to the waterway.

Comment:

The proposed works are located within the subject site, and as such will not restrict any public access along the foreshore area and to the waterway. Furthermore, the proposed works are located 5.4m above the Mean High Water Mark, and as such will not inhibit any public access.

Zone objectives

The underlying objectives of the C3 Environmental Management zone are:

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

Comment:

The proposed development will protect, and manage areas with special ecological, scientific, cultural, and aesthetic value.

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

Comment:

The proposed development will not result in any adverse effects to the values detailed above. It is important to note that the proposed rear deck structure is lightweight, and elevated by posts that will ensure no significant impacts to the area.

- ***To provide for residential development of a low density and scale, integrated with the landform and landscape and not visually prominent.***

Comment:

The proposed development will continue to provide a low density and scale dwelling house that is appropriately integrated with the landform, and landscape. The proposed works will not present any unacceptable visual prominence when viewed from the Pittwater Waterway.

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

Comment:

The proposed development will not result in any detriment to the existing riparian, foreshore vegetation, or wildlife corridors.

- ***To ensure the continued viability of ecological communities and threatened species.***

Comment:

The proposed development will not impact upon any significant ecological communities, or threatened species.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the C3 Environmental Management zone.

Finally, it is considered that the Clause 4.6 written request is acceptable, given the existing dwelling house being very modest in size, is located wholly below the Foreshore Building Line and the site provides an additional 5% landscaped open space to the minimum required. The proposed rear deck

is the only outdoor entertainment for the dwelling house, and due to the light weight construction and elevated nature of the deck, it will not result in any unacceptable visual impacts as the area below the deck can be landscaped to soften the visual aspects

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Limited development on foreshore area Development Standard is assumed by the Local Planning Panel.

7.1 Acid sulfate soils

Clause 7.1 - 'Acid sulfate soils' requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

The site is located in an area identified as Acid Sulfate Soil Class 5, as indicated on Council's Acid Sulfate Soils Planning Map.

Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land is required to be assessed to determine if any impact will occur.

The development does not propose any excavation as the proposed rear deck posts are located above existing natural ground level. As such, the proposed works will not alter the watertable, and it is considered that no impact will occur to acid sulfate soils as a result of the proposed development.

7.6 Biodiversity protection

Before determining a development application for development on land to which this clause applies, this clause requires the consent authority to consider:

(a) whether the development is likely to have:

- (i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and**
- (ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and**
- (iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and**
- (iv) any adverse impact on the habitat elements providing connectivity on the land, and**

Comment:

The development has been assessed by Council's Bushland and Biodiversity Team, who raised no objections to approval. It is considered that the development will not have any adverse impact on the condition, ecological value and significance of the fauna and flora on the land; the importance of the

vegetation on the land to the habitat and survival of native fauna; or the habitat elements providing connectivity on the land. Furthermore, the development will not unreasonably fragment, disturb, or diminish the biodiversity structure, function, or composition of the land.

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

Comment:

The development has been assessed by Council's Bushland and Biodiversity Team, who raised no objections to approval. It is considered that the proposal includes appropriate measures to avoid, minimise, or mitigate the impacts of the development.

Before granting development consent, this clause also requires the consent authority to be satisfied that:

(a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or

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

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

Comment:

The development has been assessed by Council's Bushland and Biodiversity Team, who raised no objections to approval. It is considered that the development is designed, sited and will be managed to any significant adverse environmental impact.

7.8 Limited development on foreshore area

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

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

Comment:

The proposed development is for extension, and alteration of an existing building wholly in the foreshore area as a result of the proposed entry, dining room, and replacement of the existing roof. The proposed works for the entry, dining room, and replacement of the existing roof are all contained within the existing building footprint, and does not result in the extension further into the foreshore area. These works are considered to be acceptable as exceptions within the foreshore area.

However, the proposal also includes the footprint of the building extending further into the foreshore area as a result of the proposed rear deck, and stormwater tank underneath the deck. It is considered that these works are not included as exceptions as detailed above as the proposed works result in the building extending further into the foreshore area. The variation to Clause 7.8 Limited development on foreshore area for the proposed rear deck, and stormwater tank have been assessed in under Clause 4.6 Exceptions to development standard of Pittwater Local Environmental Plan 2014 contained within

this report.

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

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

Comment:

The proposed development is consistent with the objectives of the C4 Environmental Living zone. The appearance of the proposed development is compatible with the surrounding area. The proposed development will not cause environmental harm in relation to pollution, siltation, surrounding uses, marine habitat, wetland areas, flora or fauna habitats, drainage patterns or remnant riparian vegetation. The proposed development will not cause congestion or generate conflict between people using the adjacent open space or waterway. The proposed development retains public access along the foreshore. The proposed development will not result in adverse impacts to any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land. The proposed development will not have an adverse impact on the amenity or aesthetic appearance of the foreshore. The proposed development will not impact upon sea level rise, coastal erosion or recession, or change flooding patterns.

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

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

Comment:

The proposed development will retain continuous public access to and along the foreshore. The proposed development does not impact upon any existing public access. The proposed development is acceptable in relation to the foreshore character and the existing environmental conditions.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m (West)	47.4m	-	Yes
Rear building line	Foreshore Building Line (East)	Below Foreshore Building Line	-	No
Side building line	1m (North)	1.1m	-	Yes
	2.5m (South)	1.6m	36.0% (0.9m)	No
Building envelope	3.5m (North)	Outside envelope	8.33% (0.4m)	No
	3.5m (South)	Outside envelope	9.80% (0.5m)	No
Landscaped area	25% (237m ²) not landscaped area	19.89% (188.6m ²) not landscaped area	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.8 Lower Western Foreshores and Scotland Island Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B5.13 Development on Waterfront Land	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

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
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.23 Eaves	Yes	Yes
D8.1 Character as viewed from a public place	Yes	Yes
D8.3 Building colours and materials	Yes	Yes
D8.5 Front building line	Yes	Yes
D8.6 Side and rear building line	No	Yes
D8.8 Building envelope	No	Yes
D8.9 Landscaped Area	Yes	Yes
D8.13 Stormwater overflow	Yes	Yes
D8.14 Parking management	Yes	Yes
D8.15 Site disturbance	Yes	Yes
D8.16 Scenic Protection Category One Areas	Yes	Yes
D15.12 Development seaward of mean high water mark	Yes	Yes

Detailed Assessment

D8.6 Side and rear building line

Description of non-compliance

Clause D8.6 Side and rear building line of the Pittwater DCP sets the setbacks of development to the side boundaries as 2.5 metres to one side and 1.0 metres to the other side. In this instance the 2.5 metres side building line has been applied to the southern side building line, and 1.0 metres side building line has been applied to the northern side building line. The rear setback is the foreshore building line set by the LEP under Clause 7.8. The variation to the rear building line has been assessed under Clause 4.6 of this report.

The proposal is compliant with the northern side building line requirement. However, the proposal presents a variation to the southern side building line with a setback of 1.6 metres for the proposed rear deck, presenting a variation of 36.0% (0.9m).

Under Clause D8.6 variations can be made in the following instances:

Where alterations and additions to existing buildings are proposed, maintenance of existing setbacks less than as specified may be considered where it is shown that the outcomes of this clause are achieved.

In this instance the rear deck follows the existing side setback of the dwelling house. It is important to note that the encroachment is only for a portion of the rear deck, with the remainder of the southern side achieving compliance with the required setback. Notwithstanding, the proposal has been assessed against the outcomes of the control as detailed below. It is considered that the proposal is compliant with the outcomes of the control, and as such the variation is supportable.

Merit consideration

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

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

Comment:

The proposed development is consistent with the desired future character of the Lower Western Foreshores and Scotland Island Locality.

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

Comment:

The bulk and scale of the built form is minimised as the proposed alterations and additions are to a single storey dwelling house. As such, it is considered that the proposal presents a modest structure that does not present any unacceptable bulk, or scale.

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

Comment:

The proposal will ensure equitable preservation of views and vistas to and/or from public/private places.

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

Comment:

The proposal will ensure appropriate view sharing through the siting of the dwelling house. It is considered the proposed alterations and additions to the dwelling house will presents a responsive design that includes retention of the existing landscaping.

- ***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 will ensure an appropriate level of privacy, amenity, and solar access to be provided within the development site, and maintained to residential properties.

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

Comment:

The proposed development will ensure the retention of substantial landscaping, and the retention of the mature tree canopy presently on site. The proposed works are significantly distanced from the Florence Terrace streetscape, and as such will not result in any adverse

impacts to the street frontage.

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

Comment:

The proposal results in the alterations and additions to the dwelling house, and as such the siting of the building is regulated by the location of the existing dwelling house on site.

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

Comment:

Vegetation is largely retained as a result of the proposed development. The proposal includes the retention of existing trees, and plantings that will visually reduce the built form.

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

Comment:

The subject site is surrounded by residential zones. Therefore this outcome is not relevant.

D8.8 Building envelope

Description of non-compliance

Clause D8.8 Building envelope of Pittwater 21 Development Control Plan requires buildings to be sited within the following envelope:

Planes are to be projected at 45 degrees from a height of 3.5 metres above ground level (existing) at the side boundaries to the maximum building height.

Under Clause 8.8, variations can be made in the following circumstances:

Where the building footprint has a slope is situated on a slope over 16.7 degrees (i.e. 30%), variation to this control will be considered on a merits basis.

The proposed development is situated over a slope that is over 16.7 (30%), and as such variation to the control can be considered on a merits basis.

The proposed development encroaches outside of the building envelope control along the northern elevation for a vertical height of 0.4 metres for a horizontal length of 1.6 metres (see Figure 2). The proposed development encroaches outside of the building envelope control along the southern elevation for a vertical height of 0.5 metres for a horizontal length of 2.0 metres (see Figure 3). The proposal presents variations of 8.33% (0.4 metres) along the northern elevation, and 9.80% (0.4 metres) along the southern elevation.

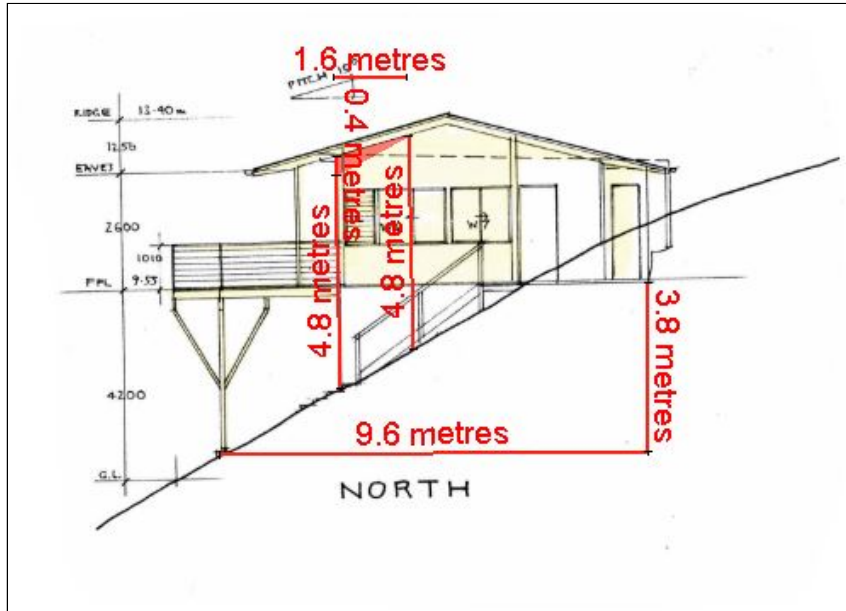


Figure 2. North Elevation (red highlighting numerical non-compliance)

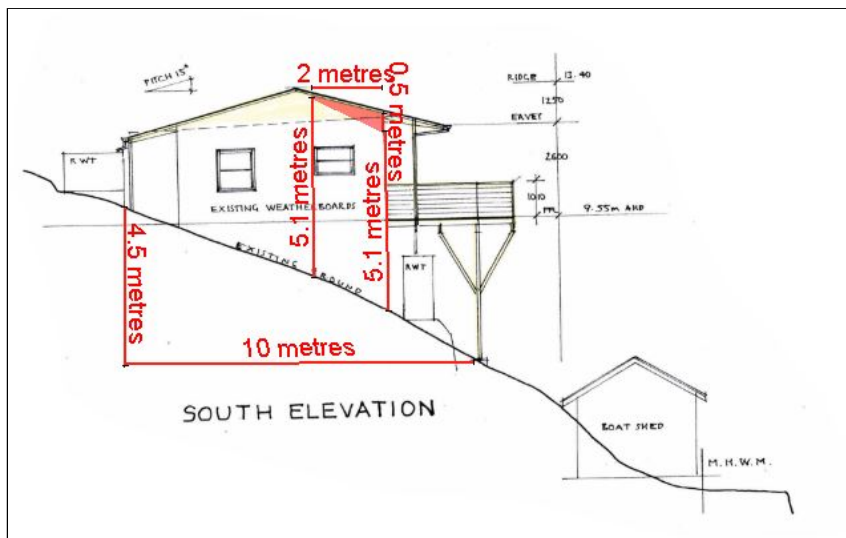


Figure 3. South Elevation (red highlighting numerical non-compliance)

The proposed variations have been assessed against the outcomes of the control. In this instance, the proposal meets the outcomes of the control as detailed below, and as such the variation is supportable.

Merit consideration

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

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

Comment:

The proposal is consistent with the desired future character of the Lower Western Foreshores and Scotland Island Locality.

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

Comment:

The proposal is distanced from the Florence Terrace streetscape, and as such will not detract from the existing streetscape character. The proposal is of a scale, and density that is below the height of the trees of the natural environment.

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

Comment:

The proposal responds, and sensitivity relates to the spatial characteristics of the existing natural environment. It is noted that no significant vegetation is removed as part of the proposed development.

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

Comment:

The proposal presents a minimal bulk and scale, and is considered to be a modest dwelling house.

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

Comment:

The proposal will equitably preserve views and vistas to and/or from public and private places.

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

Comment:

The proposal presents a reasonable level of privacy, amenity, and solar access to the development site, and adjoining residential properties.

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

Comment:

The proposal largely retains the existing vegetation on site, and as such will assist in visually reducing the built form.

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 \$ 700 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 139,920.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Pittwater Local Environment Plan 2014 seeking to justify a contravention of Clause 7.8 Limited Development on Foreshore Area has adequately addressed and demonstrated that:

- a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case;
and
 - b) There are sufficient environmental planning grounds to justify the contravention.
- 2) The proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

PLANNING CONCLUSION

This proposal, for alterations and additions to a dwelling house has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to variation of the non-numerical development standard under clause 7.8 Limited development on foreshore area of the Pittwater Local Environmental Plan 2014

The critical assessment issues included the proposed works located within the foreshore building area.

The Clause 4.6 submitted is acceptable, given the existing dwelling house is modest in size, is located below the foreshore building line provides 5% additional landscaped open space and the deck is the only outdoor entertainment area for the dwelling, is of lightweight construction, elevated and can be landscaped underneath. If approved the Reasons for Determination should reflect these circumstances.

The application was notified in accordance with Council's Community Participation Plan, and no submissions were received.

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, subject to recommended conditions. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2023/1134 for Alterations and additions to a dwelling house on land at Lot 359 DP 12749, 47 Florence Terrace, SCOTLAND ISLAND, Lot LIC 325191, 47 Florence Terrace, SCOTLAND ISLAND, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

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
2202-DA01	A	Site Plan	Stephen Crosby & Assoc. Pty. Ltd.	9 October 2023
2202-DA02	A	Floor Plan	Stephen Crosby & Assoc. Pty. Ltd.	9 October 2023
2202-DA03	A	Elevations East & West	Stephen Crosby & Assoc. Pty. Ltd.	9 October 2023
2202-DA04	-	Elevations North & South, Section A-A	Stephen Crosby & Assoc. Pty. Ltd.	July 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate	A503057_02	Stephen Crosby & Associates	31 July 2023
Bushfire Report	-	Bushfire Planning Services	14 August 2023
Bushfire Report Addendum	-	Bushfire Planning Services	19 October 2023
Effluent Management Report	211102	Blue Mountains Geological and Environmental Services Pty. Ltd.	November 2021

Geotechnical Report	AG 22488	AscentGeo Geotechnical Consulting	31 July 2023
Schedule of Exterior Finishes	-	No Author	1 August 2023
Tree Assessment and Management Plan Report	-	Syncarpia Vegetation Management	16 September 2023
Waste Management Plan	-	Stephen Crosby & Assoc. Pty. Ltd.	1 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	29 August 2023
	Ausgrid Clearances Reference Guide	29 August 2023

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

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

3. **Prescribed Conditions**

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

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

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

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

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

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

Reason: Legislative requirement.

4. General Requirements

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

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the 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 \$699.60 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 \$139,920.00.

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

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

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

9. **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. **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.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

11. **Installation and Maintenance of Sediment and Erosion Control**

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site

DURING BUILDING WORK

12. Tree and Vegetation Protection

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

- b) tree protection shall be undertaken as follows:
 - i) tree protection shall be in accordance with AS 4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
 - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
 - v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
 - vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
 - vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
 - viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS 4970-2009 Protection of trees on development sites,
 - ix) the activities listed in section 4.2 of AS 4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
 - x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS 4373-2007 Pruning of amenity trees,
 - xi) the tree protection measures specified in this clause must: be in place before work commences on the site, be maintained in good condition during the construction period, and remain in place for the duration of the construction works.

- c) the Principal Certifier must ensure that:
 - i) If activated, 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.

13. Condition of Trees

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

- ii) damaged, crushed or dying roots due to poor pruning techniques,
- iii) more than 10% loss or dieback of roots, branches and foliage,
- iv) mechanical damage or bruising of bark and timber of roots, trunk and branches,
- v) yellowing of foliage or a thinning of the canopy untypical of its species,
- vi) an increase in the amount of deadwood not associated with normal growth,
- vii) an increase in kino or gum exudation,
- viii) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
- ix) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

b) any mitigating measures and recommendations required by the Arborist/Project Arborist are to be implemented.

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

Reason: Protection of trees.

14. Wildlife Protection

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

Reason: To protect native wildlife.

15. 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.

16. Installation and Maintenance of Sediment and Erosion Controls

Council proactively regulates construction sites for sediment management.

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

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

Reason: To protect the receiving environment.

17. 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:

- o Work Health and Safety Act;
- o Work Health and Safety Regulation;
- o 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.

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. **Demolition Works - Asbestos**

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifier, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

20. **Survey Certificate**

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

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

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

21. **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.

22. **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

23. **Wastewater System Compliance**

All recommendations and required works as contained within the report by Geological and Environmental Services Pty Ltd dated November 2021 being implemented.

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

Reason: To ensure the wastewater disposal system is compliant and will not create a risk to public health.

24. **Wastewater System Installation Approved by a Suitably Qualified Person**

Prior to the release of the Occupation Certificate evidence must be supplied to the Principal Certifier from a suitably qualified person that the on-site wastewater management system has been installed according to requirements listed in the certificate of accreditation for the wastewater system and wastewater report by Geological and Environmental Services referenced as 211101 and dated November 2021.

Reason: To ensure the wastewater system has been installed correctly to minimize the potential for harm.

25. **Existing Septic Tank to be Decommissioned**

The existing septic tank is to be decommissioned in accordance with the requirements of NSW Health "Advisory Note 3 - Destruction, Removal or Reuse of Septic Tanks, Collection Wells, Aerated Wastewater Treatment Systems (AWTS) and other Sewage Management Facilities (SMF)".

Details confirming compliance with this requirement are to be supplied to the Principle Certifier.

Reason: To ensure removal of redundant systems and promote public health.

26. **Specification of Wastewater System to be Installed**

The NSW Health certificate of accreditation of the Aerated Wastewater Treatment System (AWTS) to be installed must be provided to the Principal Certifier and Council for its records prior to the release of the Construction Certificate.

Reason: To ensure the wastewater system to be installed is accredited for domestic use.

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. **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.

29. **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.

30. **Wastewater System**

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

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

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

31. **No Impacts to Native Vegetation Within Biodiversity Values Map**

Impacts to any native vegetation (including for APZ establishment/maintenance) within the area mapped as Biodiversity Values Map will require an application for development consent which must be accompanied by a Biodiversity Development Assessment Report prepared by an ecologist accredited in application of the NSW Biodiversity Assessment Method, unless otherwise approved under an existing development consent, Local Land Services Native Vegetation Panel permit, or Threatened Species License.

Reason: To ensure compliance with the Biodiversity Values Map threshold of the NSW Biodiversity Offsets Scheme

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

32. **Protection of Habitat Features**

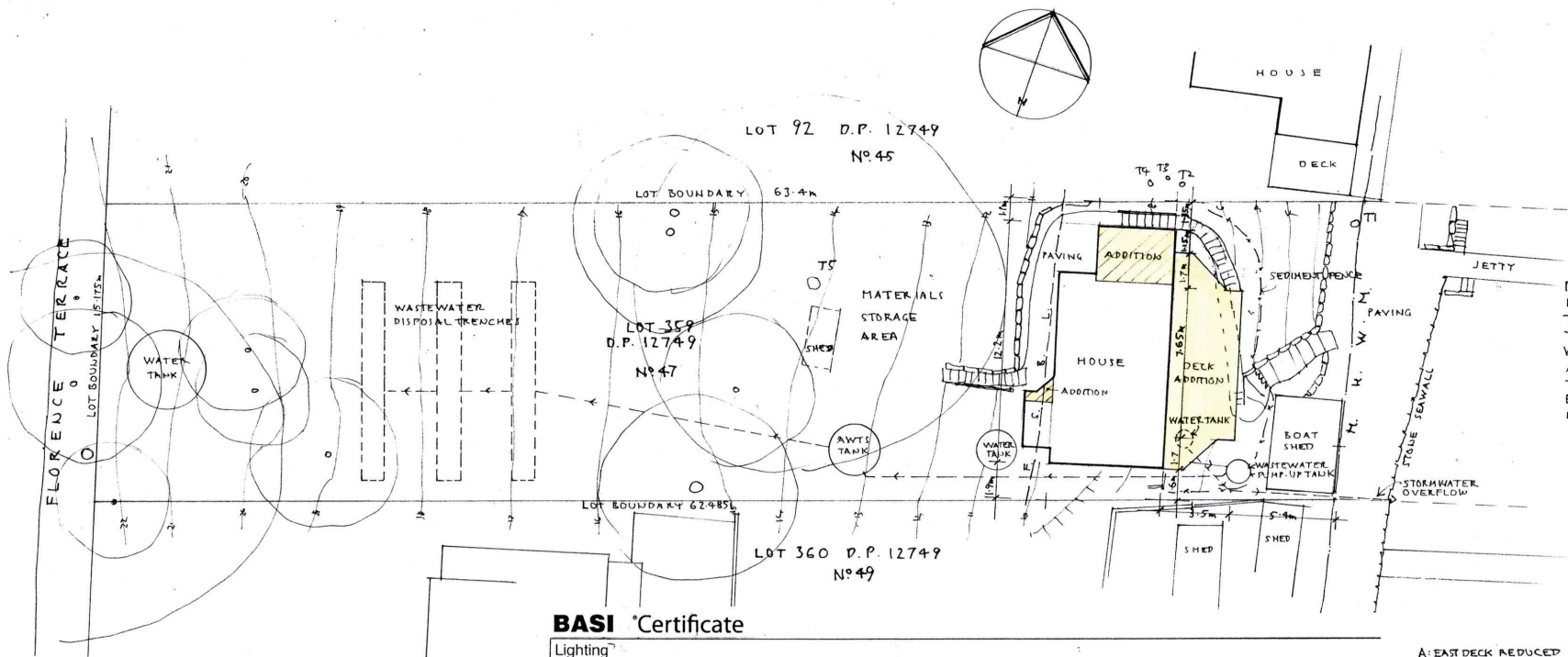
All natural landscape features, including any rock outcrops, native vegetation, soil and/or watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

33. **No Impact to Native Vegetation Within Biodiversity Values Map**

Impacts to any native vegetation (including for APZ establishment/maintenance) within the area mapped as Biodiversity Values Map will require an application for development consent which must be accompanied by a Biodiversity Development Assessment Report prepared by an ecologist accredited in application of the NSW Biodiversity Assessment Method, unless otherwise approved under an existing development consent, Local Land Services Native Vegetation Panel permit, or Threatened Species License.

Reason: To ensure compliance with the Biodiversity Values Map threshold of the NSW Biodiversity Offsets Scheme



BASI Certificate

Lighting

The applicant must ensure a minimum of 40% of new or altered light fixtures are fitted with fluorescent, compact fluorescent, or light-emitting-diode (LED) lamps.

Windows and glazed doors glazing requirements

Window / door no.	Orientation	Area of glass inc. frame (m ²)	Overshadowing Height (m)	Distance (m)	Shading device	Frame and glass type
W1	E	0.9	0	0	eave/verandah/pergola/balcony >=900 mm	timber or uPVC, single clear, (or U-value: 5.71, SHGC: 0.66)
W2	E	5	0	0	eave/verandah/pergola/balcony >=900 mm	timber or uPVC, single clear, (or U-value: 5.71, SHGC: 0.66)
W3	E	5	0	0	eave/verandah/pergola/balcony >=900 mm	timber or uPVC, single clear, (or U-value: 5.71, SHGC: 0.66)
W4	E	0.9	0	0	eave/verandah/pergola/balcony >=900 mm	timber or uPVC, single clear, (or U-value: 5.71, SHGC: 0.66)
W5	E	2.9	0	0	eave/verandah/pergola/balcony >=900 mm	timber or uPVC, single clear, (or U-value: 5.71, SHGC: 0.66)
W6	N	2.8	0	0	awning (fixed) >=900 mm	timber or uPVC, single clear, (or U-value: 5.71, SHGC: 0.66)
W7	N	1.8	0	0	awning (fixed) >=900 mm	timber or uPVC, single clear, (or U-value: 5.71, SHGC: 0.66)
W8	W	4.4	0	0	eave/verandah/pergola/balcony >=900 mm	timber or uPVC, single clear, (or U-value: 5.71, SHGC: 0.66)

A: EAST DECK REDUCED
Revision: 9-10-23

Stephen Crosby & Assoc.
Pty. Ltd.

SCOTLAND ISLAND
PO Box 204 Church Pt. NSW 2105
M: 0409 047 513 E: scrosby@internode.on.net

**ALTERATIONS
& ADDITIONS**
47 FLORENCE TCE.
SCOTLAND IS.
Lot 359 DP 12749

For: M. GARDINER

SITE PLAN

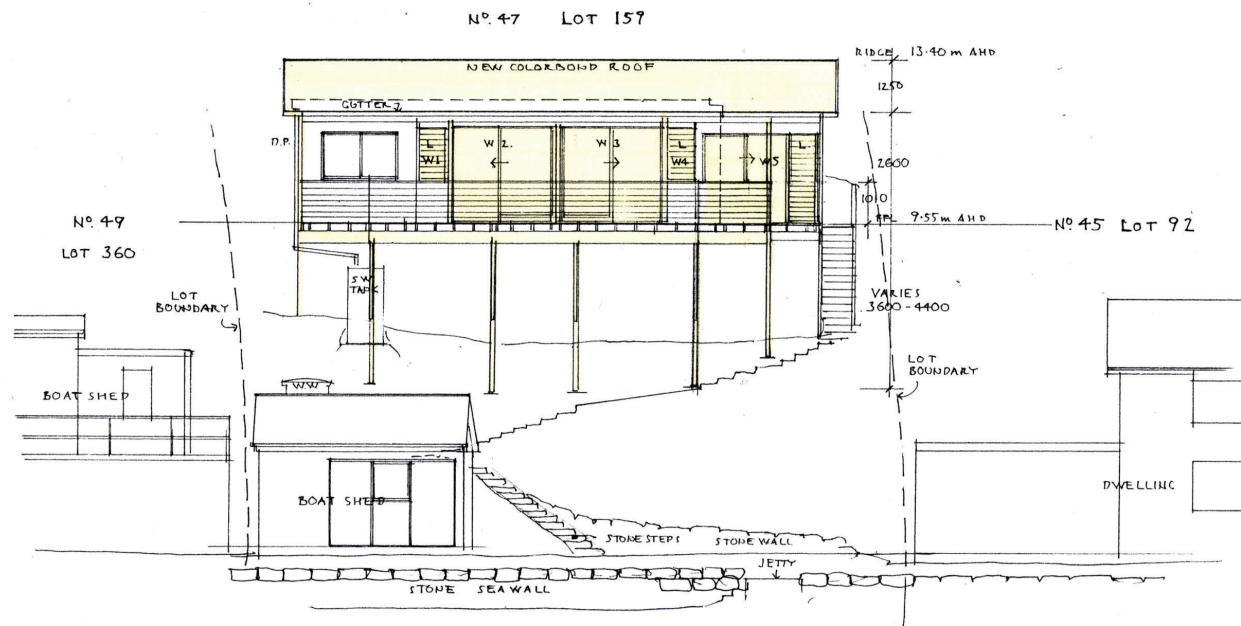
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Date: JULY 2023

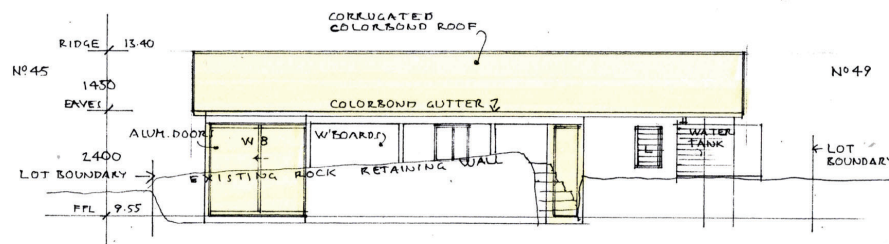
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Drawing Number

2202 - DA 01 A



EAST ELEVATION



WEST (TO FLORENCE TCE.)

A: EAST DECK REDUCED
9.10.23

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Job:

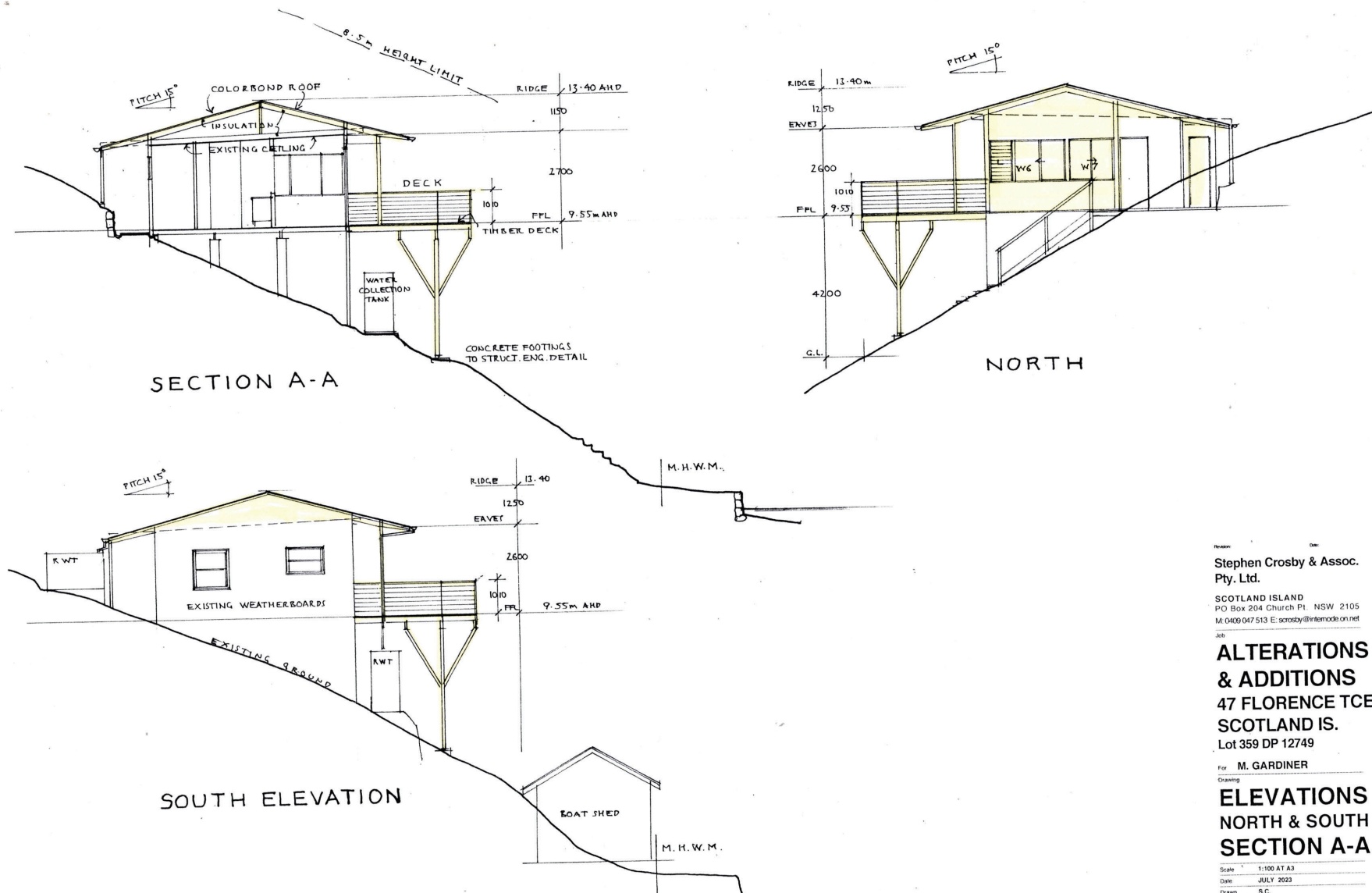
**ALTERATIONS
& ADDITIONS**
47 FLORENCE TCE.
SCOTLAND IS.
Lot 359 DP 12749

For: M. GARDINER
Drawing:

**ELEVATIONS
EAST & WEST**

Scale: 1:100 AT A3
Date: JULY 2023
Drawn: S.C.
Drawing Number:

2202 - DA 03^A



Stephen Crosby & Assoc.
Pty. Ltd.

SCOTLAND ISLAND
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**ALTERATIONS
& ADDITIONS**
47 FLORENCE TCE.
SCOTLAND IS.
Lot 359 DP 12749

For M. GARDINER

ELEVATIONS
NORTH & SOUTH
SECTION A-A

Scale 1:100 AT A3
Date JULY 2023
Drawn S.C.
Drawing Number

2202 - DA 04

CLAUSE 4.6 – VARIATION REQUEST
TO
LIMITED DEVELOPMENT ON
FORESHORE AREA
DEVELOPMENT STANDARD
UNDER CLAUSE 7.8 OF
PITTWATER
LOCAL ENVIRONMENTAL PLAN
2014
FOR
ALTERATIONS AND ADDITIONS
AT
47 FLORENCE TERRACE
SCOTLAND ISLAND

LANCE DOYLE
B.AppSc (UWS), M.Plan (UTS), RPIA, EPLA
REGISTERED PLANNER
DOYLE CONSULTING GROUP

Clause 4.6 – Exception to a Development Standard-FSBL

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Clause 4.6 – Exception to a Development Standard-FSBL

CLAUSE 4.6 – EXCEPTION TO A DEVELOPMENT STANDARD IN RELATION TO

CLAUSE 7.8 – LIMITED DEVELOPMENT ON FORESHORE AREA

OF THE PITTWATER LOCAL ENVIRONMENTAL PLAN 2014

1.0 INTRODUCTION

This written request is made pursuant to the provisions of Clause 7.8 of the Pittwater Local Environmental Plan 2014 for the erection of alterations and additions to the existing dwelling at 47 Florence Terrace, Scotland Island.

Clause 4.6 – Exceptions to Development Standards

4.6 Exceptions to development standards

- (1) *The objectives of this clause are as follows:*
 - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required*

to be demonstrated by subclause (3), and

Clause 4.6 – Exception to a Development Standard-FSBL

(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.

(5) In deciding whether to grant concurrence, the Secretary must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note.

When this Plan was made it did not include all of these zones.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

(8) This clause does not allow development consent to be granted for development that would contravene any of the following:

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which [State Environmental Planning Policy \(Building Sustainability Index: BASIX\) 2004](#) applies or for the land on which such a building is situated,

(c) clause 5.4.

Clause 4.6 – Exception to a Development Standard-FSBL

RESPONSE

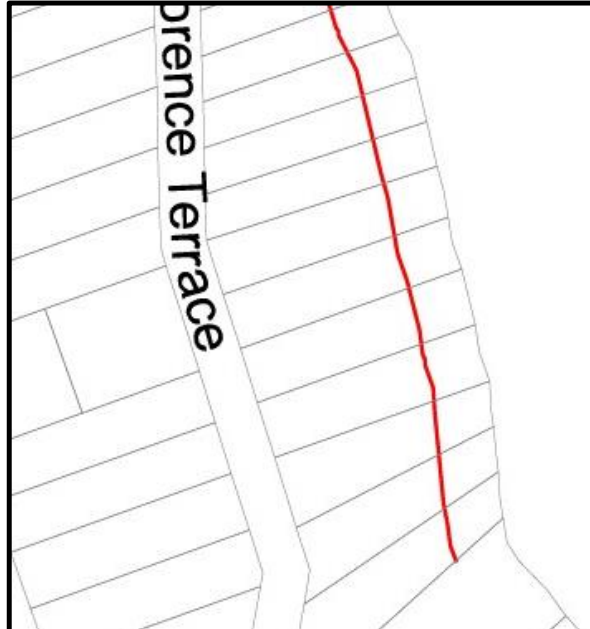
Clause 7.8 *Limited Development on foreshore area*, of the Pittwater Local Environmental Plan 2014 is a development standard that is not subject to any of the specified exclusions from the operation of Clause 4.6.

This request is composed and informed by decisions of the Land and Environment Court and in particular the judgments in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009, *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Micaul Holdings Pty Ltd v Randwick City Council* [2015] NSWLEC 1386, *Moskovich v Waverley Council* [2016] NSWLEC 1015 and *Wehbe v Pittwater Council* [2007] NSWLEC 827. The submission addresses the requirements of Clause 4.6.

This written application seeks an exception to a development standard as the proposal will breach the development standard as prescribed within the Maps component of the Pittwater Local Environmental Plan 2014 as illustrated in the following Section 2.0.

Clause 4.6 – Exception to a Development Standard-FSBL

2.0 THE DEVELOPMENT STANDARD AND THE VARIATION SOUGHT

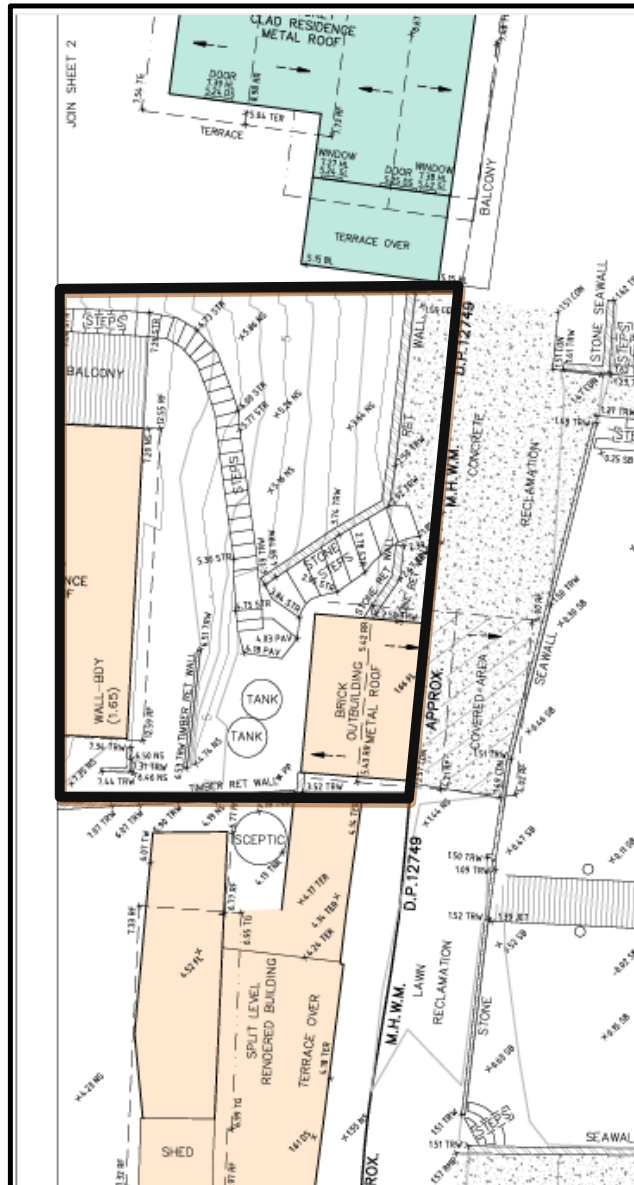


EXTRACT FROM PITTWATER LOCAL ENVIRONMENTAL PLAN 2014 – FORESHORE BUILDING LINE MAP

The subject site as identified within the Maps incorporated within the Pittwater Local Environmental Plan 2014 prescribe a development standard being a Foreshore Building Line as shown on the above extract from the Pittwater Local Environmental Plan 2014.

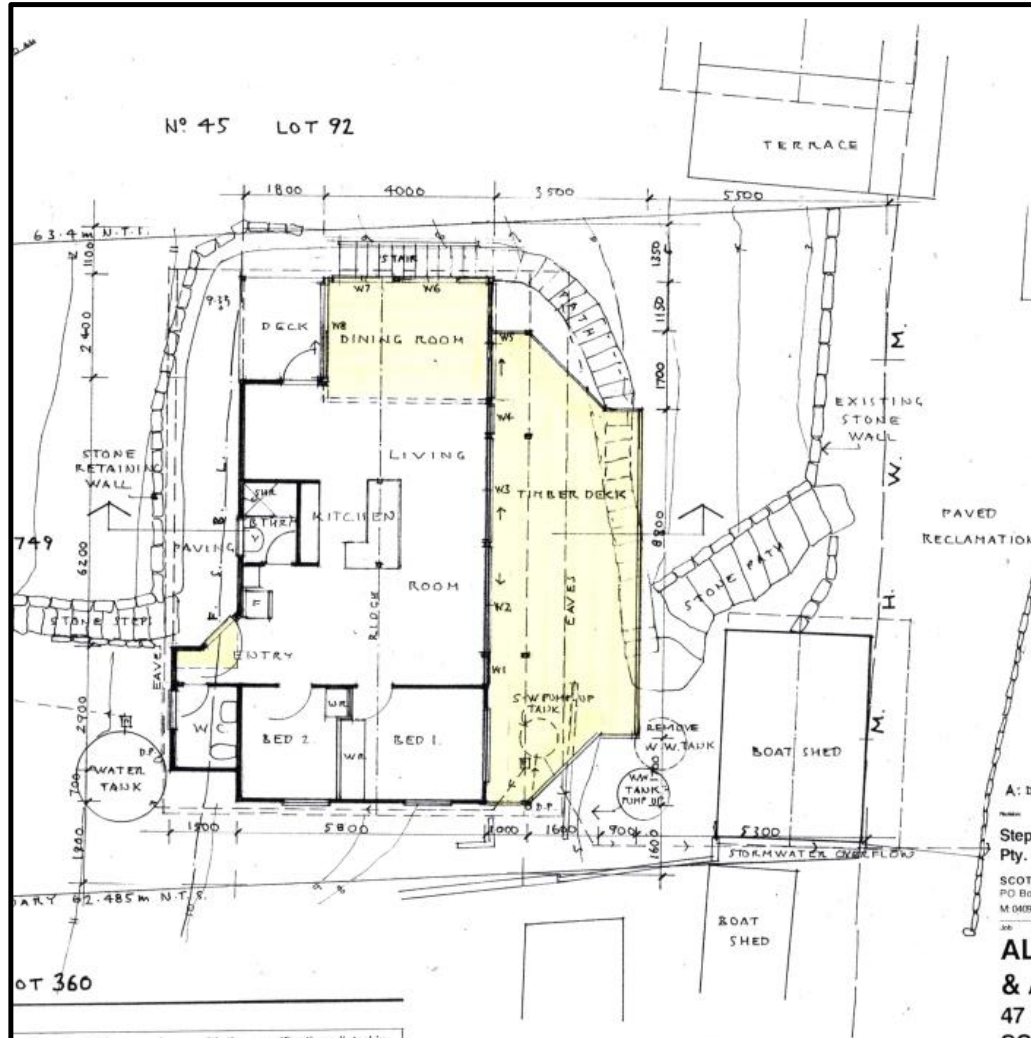
The proposal includes the construction of an elevated deck between the existing dwelling (set back 9 m From the Mean High Water Mark) and the Mean High Water Mark which will result in an encroachment into the foreshore area of 3.5 m. The structure is an open elevated deck with the resultant setback consistent with adjacent sites however not encroaching to the same degree as the structures on these adjacent sites.

Clause 4.6 – Exception to a Development Standard-FSBL



EXTRACT FROM SURVEY SHOWING EXISTING STRUCTURES NORTH AND SOUTH OF SUBJECT SITE HIGHLIGHTED

Clause 4.6 – Exception to a Development Standard-FSBL



PLAN VIEW OF AMENDED PROPOSAL SHOWING NARROWING OF WIDTH OF DECK

Clause 4.6 – Exception to a Development Standard-FSBL

3.0 THE OBJECTIVES OF THE DEVELOPMENT STANDARD

7.8 Limited development on foreshore area

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

- (a) to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area,*
- (b) to ensure continuous public access along the foreshore area and to the waterway.*
- (2) Development consent must not be granted for development on land in the foreshore area except for the following purposes—*
 - (a) the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, but only if the development will not result in the footprint of the building extending further into the foreshore area,*
 - (b) boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*
- (3) Development consent must not be granted under this clause unless the consent authority is satisfied that—*
 - (a) the development will contribute to achieving the objectives for the zone in which the land is located, and*
 - (b) the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and*
 - (c) the development will not cause environmental harm such as—*
 - (i) pollution or siltation of the waterway, or*
 - (ii) an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or*
 - (iii) an adverse effect on drainage patterns, or*
 - (iv) the removal or disturbance of remnant riparian vegetation, and*
 - (d) the development will not cause congestion or generate conflict between people using open space areas or the waterway, and*
 - (e) opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and*
 - (f) any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and*

Clause 4.6 – Exception to a Development Standard-FSBL

- (g) *in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and*
- (h) *sea level rise, coastal erosion and recession, or change of flooding patterns as a result of climate change, have been considered.*
- (4) *In deciding whether to grant consent for development in the foreshore area, the consent authority must consider whether and to what extent the development would encourage the following—*
- (a) *continuous public access to and along the foreshore through or adjacent to the proposed development,*
- (b) *public access to link with existing or proposed open space,*
- (c) *public access to be secured by appropriate covenants, agreements or other instruments registered on the title to land,*
- (d) *public access to be located above mean high water mark,*
- (e) *the reinforcing of the foreshore character and respect for existing environmental conditions.*
- (5) *In this clause—*
- foreshore area means the land between the foreshore building line and the mean high water mark of the nearest natural waterbody shown on the [Foreshore Building Line Map](#).*
- foreshore building line means the line shown as the foreshore building line on the [Foreshore Building Line Map](#)*

RESPONSE

The proposal addresses the above Objectives as follows-

The proposal will not impact on natural foreshore processes nor affect the significance and amenity of the area, maintain continuous public access along the foreshore and to the waterway.

The proposed structure incorporating a deck extending further into the foreshore area will be entirely consistent with the existing structures to the north and south of the subject site although the proposed structure will not extend as far into the foreshore area as these structures.

The proposal will provide a higher standard of amenity for the residents of the subject dwelling as the proposed decking area will allow an extension of the living areas and

Clause 4.6 – Exception to a Development Standard-FSBL

this decking area will not impact upon the locality in terms of view loss or overshadowing, will not result in the loss of any vegetation and does not impact upon coastal processes.

The alterations and additions will not have an adverse impact on the amenity or aesthetic appearance of the foreshore due to the buffer between the structure and the public viewing areas.

The proposal will have no impact upon public access along the Scotland Island foreshore.

4.0 IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?

Compliance with the development standard of Limited Development on the Foreshore Area is unreasonable and unnecessary in this case as the proposal does not set an undesirable precedent in terms of built form forward of the building line, does not impact on coastal processes or public areas and provide a high standard of amenity for the subject site without compromising the amenity of adjacent sites all public spaces.

5.0 ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD?

The following objectives of the C3 Environmental Management zone are relevant in the consideration of this proposal –

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
- *To provide for a limited range of development that does not have an adverse effect on those values.*
- *To provide for residential development of a low density and scale, integrated with the landform and landscape and not visually prominent.*
- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*
- *To ensure the continued viability of ecological communities and threatened species.*

The subject proposal does not offend any of the objectives under the C3 Environmental Management zone due to its sensitive design by integrating the

Clause 4.6 – Exception to a Development Standard-FSBL

proposal in a manner that is consistent with surrounding developments, not impacting upon any areas of special ecological, scientific, cultural or aesthetic values, maintains the low density visual catchment and retaining sufficient area within the foreshore area to provide vegetation and maintain/enhance wildlife corridors.

6.0 WILL THE PROPOSAL BE IN THE PUBLIC INTEREST?

In accordance with Clause 4.6(4)(a), Development Consent must not be granted to a development that contravenes a Development Standard unless Council is satisfied in relation to certain matters as follows;

(a) the consent authority is satisfied that:

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

RESPONSE

The provision of a level area of private open space on the subject site will be in the public interest as it will reflect the existing character of this part of the foreshore, preserve access along the foreshore and not result in any adverse material impacts upon coastal processes or vegetation and as such supports the public interest.

7.0 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

Clause 4.6 – Exception to a Development Standard-FSBL

exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument.

In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Limited Development on Foreshore Area Development Standard is assumed by the applicant.

8.0 IS THE OBJECTION TO THE DEVELOPMENT STANDARD WELL FOUNDED?

The development will assist in achieving the objectives for the zone and proposes a structure that will be compatible and consistent with the built form in the surrounding locality, not cause environmental harm, preserve continuous public access and will maintain the natural and aesthetic significance of the land and its surrounds.

I believe that the proposal is well founded, modest and although breaching a development standard endorses the outcomes sought by the standard and the C4 Environmental Living zone and as such is worthy of consent.



LANCE DOYLE
REGISTERED PLANNER
M. PLAN (UTS) B. APP SC. (UWS) RPIA

Dated: OCTOBER 2023

ITEM 5.3**DA2023/0493 - 8 OCEAN ROAD, MANLY - ALTERATIONS AND ADDITIONS TO A RESIDENTIAL FLAT BUILDING INCLUDING A FRONT FENCE****AUTHORISING MANAGER** Rod Piggott**TRIM FILE REF** 2023/676564**ATTACHMENTS**
1 [↓ Assessment Report](#)
2 [↓ Site Plan & Elevations](#)
3 [↓ Clause 4.6](#)**PURPOSE**

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2023/0493 for alterations and additions to a residential flat building including a front fence on land at Lot CP SP 14402, 8 Ocean Road, MANLY subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0493
Responsible Officer:	Kye Miles
Land to be developed (Address):	Lot CP SP 14402, 8 Ocean Road MANLY NSW 2095
Proposed Development:	Alterations and additions to a residential flat building including a front fence
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Proprietors Of Strata Plans 144023726954151
Applicant:	Judith Kubanyi
Application Lodged:	02/05/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	09/05/2023 to 23/05/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 52.9%
Recommendation:	Approval
Estimated Cost of Works:	\$ 708,815.00

EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to an existing residential flat building. The proposal involves the refinement of the building's appearance and does not entail any increase in density, floorspace, building footprint, or height. In addition, the proposal includes a new front fence and side access stair.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) as it proposes a variation of greater than 10% to Clause 4.3 Height of Buildings of the Manly Local Environmental Plan 2013 and is a Class 2 building.

The 4.6 request for non-compliance with the building height standard arises from the significant

existing breach of the height limit by the building. This breach is primarily due to the replacement of privacy screens, balustrades, windows, and doors on the upper levels, especially concerning the third-floor privacy screens, leading to a maximum variation of 52.9%. It should be noted that this breach of the development standard is a technical matter, as the overall height of the building remains unchanged.

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

PROPOSED DEVELOPMENT IN DETAIL

Development application for alterations and additions to a residential flat building including a front fence. The works comprise;

- Construction of a timber and masonry front fence with an access gate.
- Alterations to the existing courtyard at Unit 2
- Reconstruct balcony and pergola at Unit 4.
- Construction of new stairs and landings on the southern side of the building.
- Replacement of windows and external doors as indicated on the elevations.
- Replacement of eastern balcony balustrades and privacy screens.
- Reclad existing roof.
- Stormwater upgrade works.
- Associated landscaping works.

Additional information

Following a preliminary assessment of the application, Council issued a Request for Information (RFI) letter to the applicant on 11 July 2023, outlining concerns with the application.

The concerns related to front-fence height, stormwater, and overlap with existing applications.

The applicant lodged amended plans and additional information to address the concerns on 8 August 2023.

Additionally, the stormwater plans went through numerous revisions between 8 August 2023 and 28 September 2023, to address Council's requirements and improve stormwater management on the site.

The amended plans incorporated the following changes:

- Reduce front fence height.
- Remove reference to fire safety upgrade works, as these elements are subject to a separate application (EPA2020/0301).
- Construction of new stairs and landings on the southern side of the building (previously approved under DA2020/0875).
- Revised stormwater details.

Community Participation Plan

The proposed amendments will have a reduced environmental impact on the adjoining properties when compared to the original proposal. The amended plans result in a reduced size development. Therefore, formal re-notification was not required in accordance with Northern Beaches Community Participation Plan.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

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 Development Control Plan - 3.1.1 Streetscape (Residential areas)

Manly Development Control Plan - 3.4.2 Privacy and Security

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

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

Manly Development Control Plan - 4.1.5 Open Space and Landscaping

Manly Development Control Plan - 4.1.8 Development on Sloping Sites

Manly Development Control Plan - 4.1.10 Fencing

Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

SITE DESCRIPTION

Property Description:	Lot CP SP 14402 , 8 Ocean Road MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one allotment located on the eastern side of Ocean Road, Manly. The site benefits from frontages to Ocean Street and Augusta Lane, with pedestrian access obtained from both frontages and vehicular access provided through Augusta Lane.</p> <p>The site is regular in shape with a frontage of 12.19m along Ocean Road and a frontage of 12.19m to Augusta Lane. The site has respective depths of 42.595m and 42.67m along the southern and northern side boundaries and a surveyed area of 519.5sqm.</p>

	<p>The site is located within the R1 General Residential zone pursuant to the MLEP 2013 and accommodates a four storey residential flat building. The site is devoid of any significant vegetation, with small planter boxes and garden beds being located around the perimeter of the site.</p> <p>The site experiences a fall of approximately 9.5m that slopes from the north-western corner (Ocean Street) to the south-eastern rear corner (Augusta Lane).</p> <p>Detailed Description of Adjoining and Surrounding Development</p> <p>Adjoining and surrounding development is characterised by a mix of residential developments, including residential flat buildings, semi-detached dwellings and dwelling houses. Numerous local heritage items are located within the immediate locality. The Ocean Street frontage adjoins Heritage Item No. 12 'All stone kerbs', as identified within Schedule 5 of the MLEP 2013.</p>
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Map:



SITE HISTORY

The site 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. 42/95 for creation of a new unit in the basement area of the existing residential flat building approved by Council on 20 October 1995.
- Development Application No. 265/95 for erection of balconies to the rear of residential flat building refused by Council on 1 December 1995.

- Development Application No. 461/97 for erection of balconies to rear of residential flat building approved by Council on 29 April 1998.
- Development Application No. 140/07 for alterations to existing residential flat building, replace existing patio at rear of ground level to Unit 6 with new balconies to match existing balconies above approved by Council on 31 May 2007.
- Development Application No. 2020/0875 for alterations to existing residential flat building, replace existing southern side access stair approved by Council on 16 October 2020.

Site Visits

A site visit was undertaken at the subject site on 14 June 2023.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Mainly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider “Prescribed conditions” of development consent. These matters have been addressed via a condition of consent.</p> <p><u>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 revised stormwater details.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental	<p>(i) Environmental Impact</p> <p>The environmental impacts of the proposed development on the natural and built environment are addressed under the</p>

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 09/05/2023 to 23/05/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><i>Supported, no conditions.</i></p> <p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>

Internal Referral Body	Comments
Landscape Officer	<p>Supported, subject to conditions.</p> <p>The proposal is supported with regard to landscape issues.</p> <p>Council's Landscape Referral section have considered the application against the Manly Local Environment Plan, and the following Manly DCP 2013 controls (but not limited to):</p> <ul style="list-style-type: none"> • 3.3.1 Landscaping Design • 3.3.2 Preservation of Trees or Bushland Vegetation • 4.1.5 Open Space and Landscaping <p>Trees 2 and 4 are exempt by height or proximity to an approved dwelling, and as such do not require consent for removal. Tree 3 can be supported for removal due to its restricting location, the requirement of the fire safety upgrades and as a native replacement tree is proposed. All other trees and vegetation to be retained shall be protected during works, subject to the imposed conditions.</p>
NECC (Development Engineering)	<p>Supported, subject to conditions.</p> <p>The proposal is for alterations and additions to a residential flat building. The site is in Region 3, Zone1. The existing and proposed impervious area exceeds 60% of the site area and as such OSD is required in accordance with Council's Water Management for Development Policy. OSD shall be designed in accordance with Section 9.3.3.2. Stormwater plans are to be submitted for assessment.</p> <p>Additional Information Provided on 8/8/2023</p> <p>The submitted stormwater plans have insufficient information regarding the proposed OSD system. The stormwater plans are to be amended as follows:</p> <ul style="list-style-type: none"> • The volume of each proposed OSD system shall be shown on the plans. • The impervious and pervious areas draining to each OSD system is to be shown • Flow calculations including predeveloped, post developed and bypass flows for all storm events are to be shown. • The proposed orifice sizes are too small and likely to block. Orifice size to be a minimum of 40mm. • The orifice is shown as located on the outlet to the DCP which is likely to surcharge. The orifice is to be located on the inlet to the discharge control pit. • Overflow from the OSD tank to be connected to the outlet. <p>The proposed application cannot be supported by Development Engineering due to lack of information to address:</p> <ul style="list-style-type: none"> • <i>Stormwater drainage for the development in accordance with clause 3.7 Stormwater Management.</i>

Internal Referral Body	Comments																																	
	<p>Additional Information Provided on 12/9/2023</p> <p>The submitted stormwater plans are not satisfactory. The orifice is shown as located on the outlet to the DCP which is likely to surcharge. The stormwater plans are to be amended as follows:</p> <ul style="list-style-type: none">• Flow calculations including predeveloped, post developed and bypass flows for all storm events are to be shown.• The orifice is to be located on the outlet pipe of the OSD tanks.• The drains model to be provided for assessment. <p>The proposed application cannot be supported by Development Engineering due to lack of information to address:</p> <ul style="list-style-type: none">• <i>Stormwater drainage for the development in accordance with clause 3.7 Stormwater Management.</i> <p>Additional Information Provided on 28/9/2023</p> <p>The amended stormwater plans have been reviewed. No objections to approval subject to conditions as recommended.</p>																																	
Strategic and Place Planning (Heritage Officer)	<p><i>Supported, no conditions.</i></p> <table><tr><th colspan="3">HERITAGE COMMENTS</th></tr><tr><th colspan="3">Discussion of reason for referral</th></tr><tr><td colspan="3">The proposal has been referred to Heritage as the subject site adjoins a heritage item</td></tr><tr><th colspan="3">I2 - Stone Kerbs</th></tr><tr><th colspan="3">Details of heritage items affected</th></tr><tr><td colspan="3">Statement of Significance Stone kerbs are heritage listed.</td></tr><tr><td colspan="3"><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.</td></tr><tr><th colspan="3">Other relevant heritage listings</th></tr><tr><td>SEPP (Biodiversity and Conservation) 2021</td><td>No</td><td></td></tr><tr><td>Australian Heritage Register</td><td>No</td><td></td></tr><tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr></table>	HERITAGE COMMENTS			Discussion of reason for referral			The proposal has been referred to Heritage as the subject site adjoins a heritage item			I2 - Stone Kerbs			Details of heritage items affected			Statement of Significance 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.			Other relevant heritage listings			SEPP (Biodiversity and Conservation) 2021	No		Australian Heritage Register	No		NSW State Heritage Register	No	
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Internal Referral Body	Comments
	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 to an existing residential flat building. This includes amongst other items a new front fence, replacing the western balcony and pergola, replacing the roof, rear balcony railings and works to the side stairs. The heritage item is located in the road reserve outside the property. However no works are proposed to the kerb and given the small nature of the fence replacement on the boundary, the proposal is considered to not impact upon the heritage item or its significance.
	Therefore Heritage raises no objections and requires no conditions.
	Consider against the provisions of CL5.10 of MLEP.
	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
Waste Officer	Supported, subject to conditions. Waste Management Assessment. Supported, subject to conditions.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 65 - Design Quality of Residential Apartment Development

SEPP 65 – Design Quality of Residential Apartment Development states the following:

(1) This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:

(a) the development consists of any of the following:

- (i) the erection of a new building,*
- (ii) the substantial redevelopment or the substantial refurbishment of an existing building,*
- (iii) the conversion of an existing building, and*

(b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and

(c) the building concerned contains at least 4 or more dwellings.

As the proposal at large only seeks consent for the construction of a new external staircase along the southern elevation of the residential flat building, the construction of a new front fence and minor cosmetic changes, the development is not considered to fall under the above categories. The proposal is not considered a substantial redevelopment as the internal layout, overall height and building footprint is unchanged.

Accordingly, no further consideration of this Policy is required in this instance.

SEPP (Building Sustainability Index: BASIX) 2004

The applicant requested an exemption to SEPP - BASIX on the grounds that the cost of work for each unit was less than \$50,000. However, as the proposed alteration of the BASIX building is estimated to cost \$708,815, the project is considered a BASIX development.

The applicant has stated that a BASIX will be provided, which will be addressed through a condition if the application is approved.

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	13.0m (privacy screens)	52.9%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	N/A
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes

Clause	Compliance with Requirements
6.4 Stormwater management	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	13.0m
Proposed:	8.5m
Percentage variation to requirement:	52.9%

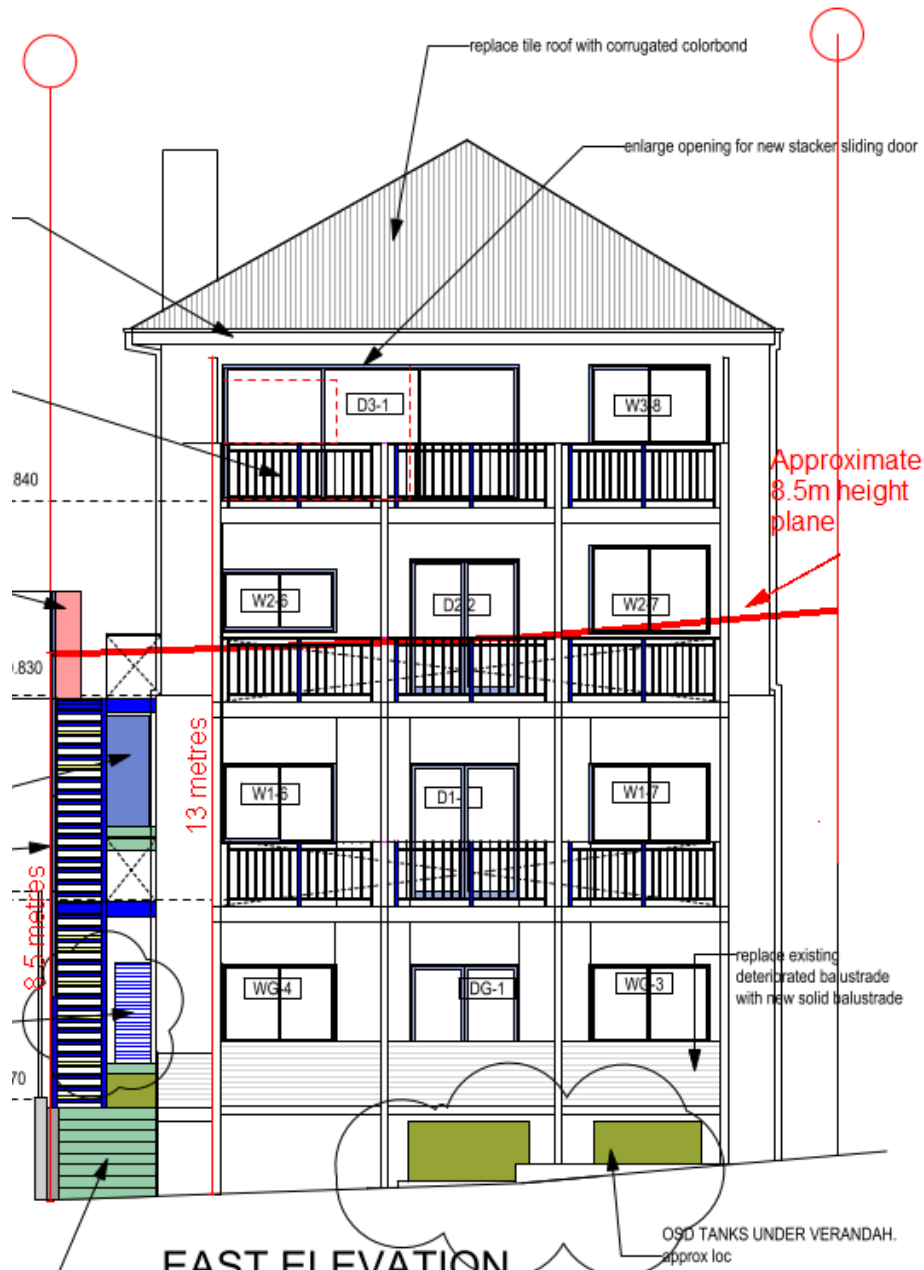


Figure 1. Building height non-compliance.

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 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 applicant's written request argues, in part:

- *The existing building has a height in excess of 8.5 metres.*
- *The work does not alter the height of the existing building.*
- *The works proposed retain the existing building height on all elevations and with the exception of the enlarging of an opening on the existing east wall consist of replacement and repair of existing building elements.*

Council agrees with the applicant's written request that the works are 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, despite works occurring above the maximum building height.

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. 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 built form of the residential flat building remains unchanged, with the works limited to remedial works associated with the existing balconies and replacement of windows and doors. The works are consistent with the streetscape character of the locality.

b) to control the bulk and scale of buildings,

Comment:

The built form of the building remains unchanged.

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 proposal will not result in the loss of any views to and from residential development and public spaces and views between public spaces.

- 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:

Existing solar access will be maintained.

- 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 existing height of the residential flat building remains unchanged.

Zone objectives

The underlying objectives of the R1 General Residential zone:

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

Comment:

The proposal seeks consent for critical remedial works of the building's private open space.

It is considered that the development satisfies this objective.

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

Comment:

The existing units remain unaltered by this proposal.

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:

Not applicable, the existing use is maintained.

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 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, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the Local Planning Panel.

6.2 Earthworks

The objectives of Clause 6.2 of the MLEP 2013 are as follows:

- (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.*

The proposal involves approximately 2m of cut to accommodate for a retaining wall. 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 site has been used for residential purposes for an extended period of time, with no prior land use. In this regard, it is not anticipated that the soil will be contaminated. The excavated material will be

managed in accordance with the Waste Management Plan.

(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:

There are no known Aboriginal or archaeological relics on the site.

(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. Moreover, suitable conditions have been included with this consent to ensure sediment and erosion control measures are in place during works to minimise the migration of sediments onto adjoining lands.

(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.

Concluding Remarks

Having regard to the above assessment, it is concluded that the proposal satisfies the relevant provisions within Clause 6.2 of the MLEP 2013.

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 existing 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.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 519.5sqm	Requirement	Proposed	% Variation*	Complies
4.1.4.1 Street Front Setbacks	Prevailing building line or 6m	3.4m (Balcony)	N/A	Yes (Prevailing building line)
4.1.4.2 Side Setbacks and Secondary Street Frontages	South: 4.11m (1/3 of wall height)	nil setback (Side access stair)	100%	No
4.1.4.4 Rear Setbacks	8m	No change to established rear building line	N/A	N/A
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area	No change to total open space	N/A	N/A
	Open space above ground 25% of total open space	No change to total open space above ground	N/A	N/A
4.1.5.2 Landscaped Area	Landscaped area 35% of total open space	No change to landscaped area	N/A	N/A
4.1.5.3 Private Open Space	12sqm per dwelling	No change to private open space	N/A	N/A

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.1 Streetscape (Residential areas)	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.3.1 Landscaping Design	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	No	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	N/A	N/A
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.10 Fencing	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	No	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

Clause 3.1.1.2 of the MDCP 2013 sets out the following requirements for front fences, which read as follows:

- a) Notwithstanding the maximum height provisions for fencing at paragraph 4.1.10; the siting, height and form of boundary fences and walls should reflect the fencing characteristic of the locality, particularly those of adjacent properties. All fencing and wall materials must be compatible with the overall landscape character and the general appearance of the building and the streetscape.*
- b) Boundary fences or walls must not be erected where they would conflict with the local character.*
- c) Front fences and gates must be constructed in materials that complement the architectural style and period of the dwelling and improve the streetscape. In particular, fencing adjacent to a public road or place must not be constructed in metal cladding, powder coated or otherwise.*
- d) Gates must not encroach on public land when opening or closing.*

Comment:

In response to the above criteria, a detailed assessment is carried out below:

- a) The proposed fence contains a maximum height of 1.65 metres, which exceeds the 1 metre requirement specified within Clause 4.1.10 of the MDCP 2013.

An inspection of the street reveals that there various examples (including the subject site) of front

fences which exceed the 1 metre height requirement. Overall, the proposed fence has incorporated an open design to ensure compatibility within the surrounding streetscape.

b) The subject site is considered unique in nature given that it contains two street facing apartments and an existing footpath runs parallel to the site's western boundary at an elevated level. Therefore, the varied fence height is considered reasonable to protect the subject site's private open space areas. Notwithstanding this, the proposed fence has responded appropriately to the topography of the land to mitigate the visual impact within the streetscape. Overall, the proposal results in acceptable streetscape outcomes, which will prevent conflict with the local character.

c) The proposal involves the construction of a timber and masonry fence. The proposal's design will be compatible within the established built environment.

d) The proposed access gates will not encroach on public land when opened.

Based on the above assessment, it is concluded that the proposal does satisfy the streetscape requirements for fences.

Merit consideration

With regard to the consideration of a variation, the proposal is considered against the underlying objectives of the control as follows:

Objective 1) To minimise any negative visual impact of walls, fences and carparking on the street frontage.

Comment:

As above, the visual impact of the works have been mitigated by a site responsive design and replace an existing solid 1.8 metre front fence.

Objective 2) To ensure development generally viewed from the street complements the identified streetscape.

Comment:

The fence, will be consistent with the established streetscape character along Ocean Road.

Objective 3) To encourage soft landscape alternatives when front fences and walls may not be appropriate.

Comment:

The proposal's design will include soft landscaping alternatives behind the fence to remain consistent with the established streetscape character.

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

3.4.2 Privacy and Security

Noting that the external stairs present a nil setback from the southern side boundary and that the

development will be in close proximity to an adjoining pool, deck and lawn area at 6 Ocean Street (southern adjoining property), the proposal is considered against the underlying objectives of the control as follows:

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

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

Comment:

The current external staircase is devoid of any privacy screening (excluding the highest landing) and provides opportunities for overlooking into private open space located to the rear of the dwelling at the southern adjoining property. To negate the visual privacy impacts, the proposal has been designed to include a 1.65 metre along southernmost edge of the staircase. The provision of this screen ensures a reasonable level of visual privacy is maintained between private properties, thereby satisfying this outcome.

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

Comment:

The privacy screen will not result in unacceptable overshadowing impacts or result in significant view loss.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal will not compromise casual surveillance of the street from the property.

Concluding Remarks

Having regard to the above assessment, it is considered that the relevant objectives of the control have been achieved. Therefore, the application is supported on merit, subject to conditions.

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

It is considered that the matters pertaining to the acceptability of building height is discussed and covered with the '4.6 Exceptions to development standards' section of this report. For those reasons, it is considered that the variation to the height controls are acceptable, particularly as the overall height of the building is unaltered.

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

Description of non-compliance

Front setback

The proposal involves the reconstruction of the existing balcony and pergola at Unit 4, which is set back 3.4 metres from the front boundary (Ocean Road). Manly DCP requires new development to

relate to the front building line of neighbouring properties and in the immediate vicinity. The works are within the footprint of the existing structure and considered to maintain the prevailing building line along within Ocean Road.

Side setback

Manly DCP requires development to be setback at least 1/3 of the adjacent wall height. For this assessment, a prescribed 4.11m side building line is applied to the southern elevation. The external staircase along the southern elevation of the flat building presents a nil setback from the southern side boundary, which fails to satisfy the prescribed requirement.

Merit consideration:

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

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

Comment:

The stairs replace an existing temporary staircase and adhere to a similar side building line. Therefore, the visual presentation of the flat building will remain substantially unaltered.

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 southern elevation of the staircase and lower landing includes a 1.65m high privacy screen to prevent opportunities for direct overlooking into the private open space at 6 Ocean Road. The staircase will not compromise significant views from principal living areas or key private open space.

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

Comment:

Flexibility is afforded in this circumstance as the proposal will not result in unacceptable amenity impacts. Moreover, the development will not have an unreasonable impact on the existing built and natural environment.

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 development does not result in the removal of vegetation.

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

Comment:

The site is not mapped within a bushfire prone area.

Concluding Remarks

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

4.1.5 Open Space and Landscaping

The development will not alter the existing total open space or landscaping on the site.

4.1.8 Development on Sloping Sites

A Preliminary Landslip Assessment (prepared by Crozier Geotechnical Consultants dated 18 April 2023) has been submitted with this application, in accordance with this control. The Assessment has been referenced as part of this consent.

4.1.10 Fencing

The proposal exceeds the maximum allowable height for fences under Clause 4.1.10. This clause relies upon the objectives of Clause 3.1 under Manly DCP 2013. An assessment of the proposal against the objectives under Clause 3.1 has been provided within this report. The assessment found the proposal to be consistent with the objectives of Clause 3.1, subject to recommended conditions.

4.4.5 Earthworks (Excavation and Filling)

Description of non-compliance

Clause 4.4.5 of the MDCP 2013 generally limits fill to 1.0 metre above the existing ground level. The proposal involves 1.9 metre of fill to accommodate for a retaining wall, which is contrary to the control.

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying objective 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:

The extent of the earthworks is primarily confined to the footprint of the staircase. The natural topography of the site has undergone significant alterations over time. Consequently, it is not expected that the development will disrupt the natural flow of ground and surface water. Sediment and erosion control measures will be in action during works to minimise the migration of sediments onto adjoining lands. Furthermore, the earthworks will not involve the removal of any landscaped features. The Preliminary Landslip Assessment, as prepared by Crozier Geotechnical Consultants (dated 18 April 2023), which was submitted with the application, confirms the project's compliance with geotechnical requirements. In summary, the proposal aligns with this objective.

Concluding Remarks

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

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 \$7,088 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$708,815.

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.

The subject site currently contains a five storey residential flat building. The development application is limited to a minor refurbishment of the building that results in the development technically breaching the height of buildings standard, despite the overall height of the building not increasing.

No public submissions were received during the notification period.

It is considered that the non-compliance with the breach of the building height standard are reasonable and the Clause 4.6 variation to the height of buildings development standard can be supported based on the applicants written request, as it has been established that it is unreasonable to require compliance and that there are sufficient environmental planning grounds to sustain variation.

Overall, the proposal will be an upgrade to the existing building, while satisfying the objectives of the zone and being consistent with character of the locality.

Accordingly, the application is recommended for approval subject to the receipt of the required BASIX certificate and recommended conditions attached to this report.

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

RECOMMENDATION

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

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2023/0493 for Alterations and additions to a residential flat building including a front fence on land at Lot CP SP 14402, 8 Ocean Road, MANLY, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA-02-B: Site plan	25 July 2023	Kubanyi Architects
DA-A03-C: Ground level plan	7 August 2023	Kubanyi Architects
DA-A04-C: First level plan	7 August 2023	Kubanyi Architects
DA-A05-B: Second level plan	25 July 2023	Kubanyi Architects
DA-A06-A: Third level plan	14 April 2023	Kubanyi Architects
DA-A07-A: Roof plan	14 April 2023	Kubanyi Architects
DA-A08-C: Section A-A	7 August 2023	Kubanyi Architects
DA-A09-C: Section B-B	7 August 2023	Kubanyi Architects
DA-A10-B: Section C-C	25 July 2023	Kubanyi Architects
DA-A11-C: East & west elevations	7 August 2023	Kubanyi Architects
DA-A12-C: South elevation	7 August 2023	Kubanyi Architects
DA-A13-C: External finishes	7 August 2023	Kubanyi Architects
DA-dem.01- B: Demolition plan	7 August 2023	Kubanyi Architects

Engineering Plans

Drawing No.	Dated	Prepared By
H-01-RevE	September 2023	Abel & Brown P/L
H-02-RevE	September 2023	Abel & Brown P/L
H-03-RevE	September 2023	Abel & Brown P/L
H-04-RevE	September 2023	Abel & Brown P/L

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Preliminary Landslip Geotechnical Assessment	18 April 2023	Crozier Geotechnical Consultants

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

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

Waste Management Plan		
Drawing No./Title.	Dated	Prepared By
Waste Management Plan	Not dated	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	04 May 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

- All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- 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 \$7,088.15 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 \$708,815.00.

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

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

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

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

6. Security Bond

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

7. On-Site Stormwater Detention Details

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by Abel & Brown Pty Ltd, project number 3507, drawing number H-01 to H-05, issue E, dated Sep 23. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

i.OSD shall be provided in accordance with Section 9.3.3.2. of Council's Water Management for Development Policy.

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

8. 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.

9. 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.

10. Waste and Recycling Requirements

Details demonstrating compliance with Northern Beaches Waste Management Guidelines, are to be submitted to and approved by the Certifier prior to the issue of any Construction Certificate.

If the proposal, when compliant with the Northern Beaches Waste Management Guidelines, causes inconsistencies with other parts of the approval i.e. architectural or landscaped plans, a modification(s) to the development may be required.

Reason: To ensure adequate and appropriate waste and recycling facilities are provided.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

11. Tree Removal Within the Property

This consent approves the removal of existing trees on the subject site as identified in the approved Plans, or as listed below:

- a) tree 3 - Lilly Pilly as identified on drawing DA-A01-A,
- 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.

DURING BUILDING WORK

12. 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.

13. 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.

14. 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:

- o Work Health and Safety Act;
- o Work Health and Safety Regulation;
- o Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- o Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- o Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- o 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.

15. Demolition Works - Asbestos

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be

disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifier, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

16. **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.

17. **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.

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 Certifying Authority.

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

19. **Waste/Recycling Requirements (Waste Plan Submitted)**

During demolition and/or construction the proposal/works shall be generally consistent with the submitted Waste Management Plan titled dated [INSERT].

Reason: To ensure waste is minimised and adequate and appropriate waste and recycling facilities are provided.

20. **Waste/Recycling Requirements (Materials)**

During demolition and/or construction the following materials are to be separated for recycling: timber, bricks, tiles, plasterboard, metal, concrete, and evidence of disposal for recycling is to be retained on site.

Reason: To ensure waste is minimised and recovered for recycling where possible.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

21. **Required Tree Planting**

- a) One (1) *Elaeocarpus reticulatus* shall be planted in the front setback as shown on drawing DA-02-A, and in accordance with the following:
- i) 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, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, and located either within garden bed or within a prepared bed within lawn,

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

Reason: To maintain environmental amenity.

22. **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), hydraulic 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.

23. **Waste/Recycling Compliance Documentation**

Evidence of disposal for recycling from the construction/demolition works shall be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure waste is minimised and recycled.

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

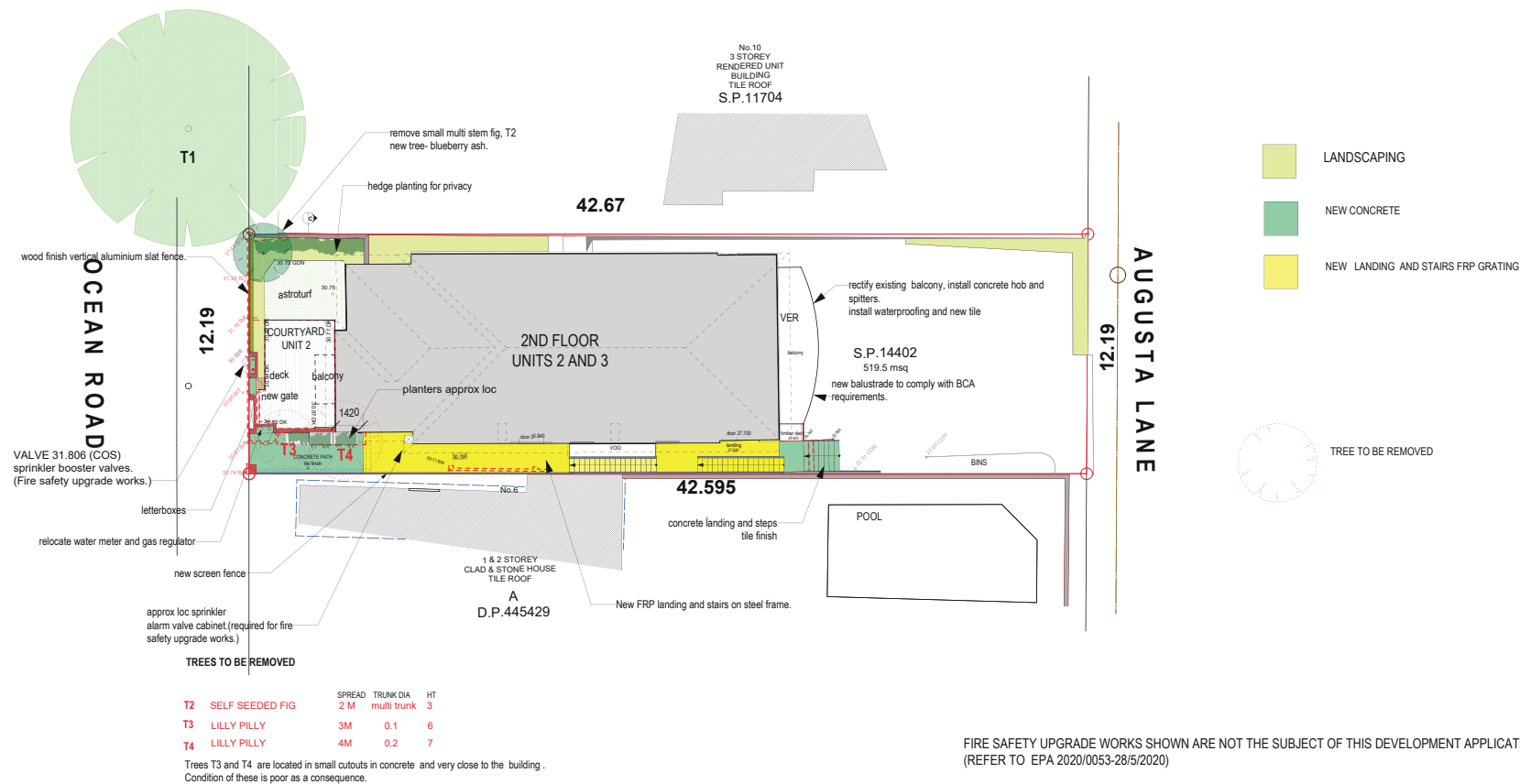
24. **Landscape Maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees required to be planted under this consent

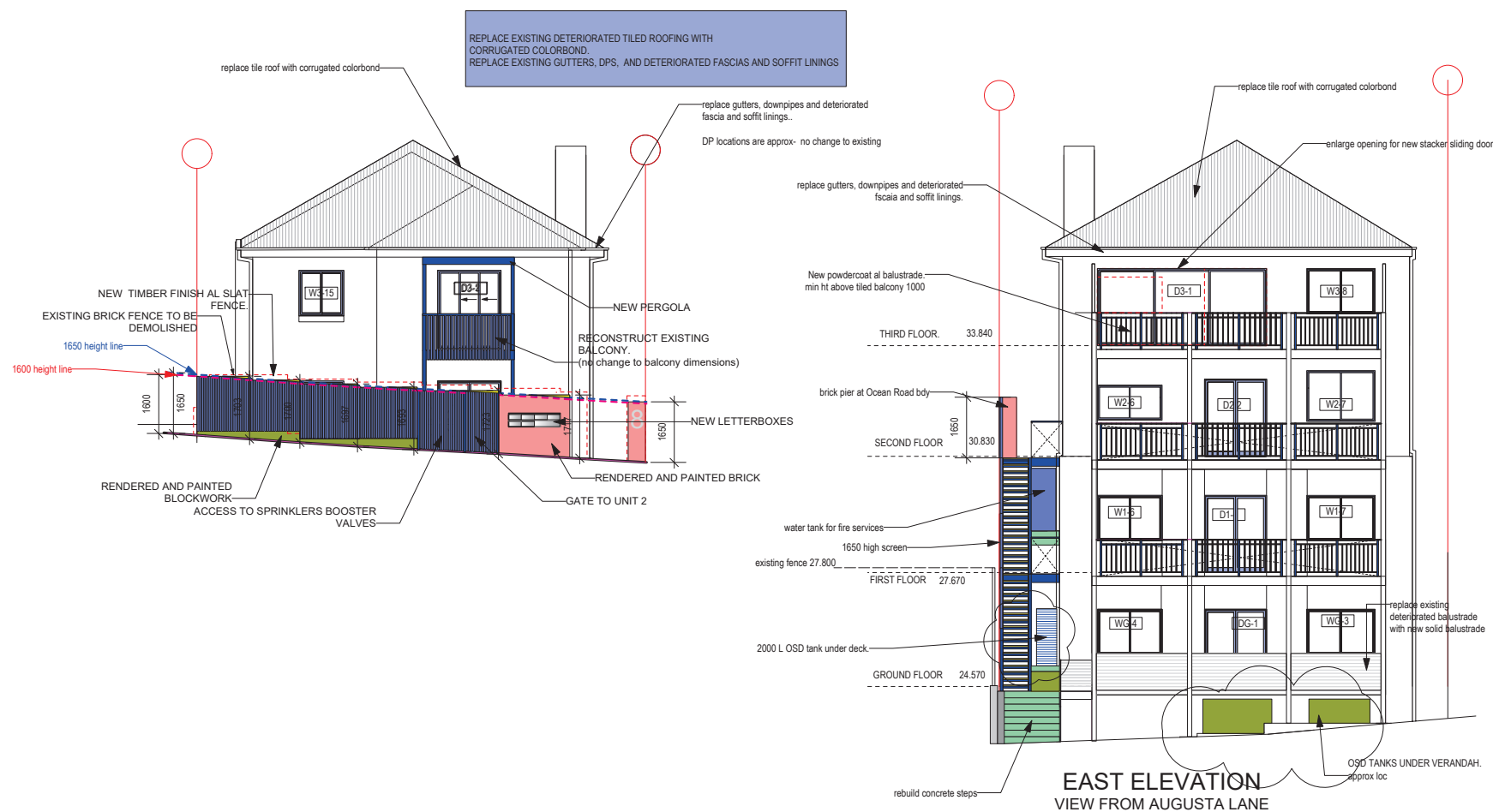
are to be mulched, watered and fertilised as required at the time of planting. If any tree required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with any conditions of consent.

The approved landscape area shall in perpetuity remain as planting under the development consent.

Reason: To maintain local environmental amenity.



PROPOSED ALTERATIONS TO FRONT FENCE AND ENTRY AND UNIT 4 BALCONY AT 8 OCEAN ROAD MANLY 2095 SP 14402					FOR THE OWNERS SP 14402		KUBANYI ARCHITECTS NSW REG 4087 DEP 0000592 LEVEL 1, 122 VICTORIA ROAD DRUMMOYNE 2047 PH 0412 500 240 JUDITHKUBANYI@IINET.NET.AU			B 25.7.2023 reference to currently approved DA 2020/0875 deleted. new landing and stairs shown this DA						
												DRWG No DA-02-B PROPOSED SITE PLAN				
							Scale		Date April 14 2023		Drawn jk				issue DA	



FIRE SAFETY UPGRADE WORKS SHOWN ARE NOT THE SUBJECT OF THIS DEVELOPMENT APPLICATION.
(REFER TO EPA 2020/0053-28/5/2020)

FOR OSD REFER TO ABEL AND BROWN DRAWINGS HO.B, H02.B, H03.B, H04.B

<p>PROPOSED ALTERATIONS TO FRONT FENCE AND ENTRY AND UNIT 4 BALCONY AND ASSOCIATED WORKS AT 8 OCEAN ROAD MANLY 2095 SP 14402</p>	<p>FOR THE OWNERS SP 14402</p>	<p>KUBANYI ARCHITECTS NEW REG-4087 DEP 0000592 LEVEL 1, 122 VICTORIA ROAD DRUMMOYNE 2047 PH 0412 500 240 JUDITHKUBANYI@INET.NET.AU</p>				<p>DRWG No DA-A11-C</p> <p>EAST AND WEST ELEVATIONS</p>
		<p>Scale 1:100@A3</p>	<p>Date April 14 2023</p>	<p>Drawn jk</p>	<p>issue DA</p>	

C	7.8.2023	OSD tank location shown
B	25.7.2023	reference to currently approved DA 2020/0875 deleted. New landing and stairs shown this DA Front fence height reduced

REPLACE EXISTING DETERIORATED TILED ROOFING WITH CORRUGATED COLORBOND.
REPLACE EXISTING GUTTERS, DPS, AND DETERIORATED FASCIAS AND SOFFIT LININGS


window and external door replacements on south elevation as required for fire safety upgrade works.



SOUTH ELEVATION

FOR OSD REFER TO ABEL AND BROWN DRAWINGS HQ.B.H02.B, H03.B, H04.B

FIRE SAFETY UPGRADE WORKS SHOWN ARE NOT THE SUBJECT OF THIS DEVELOPMENT APPLICATION.
(REFER TO EPA 2020/0053-28/5/2020)

C	7.8 2023	OSD tank location shown
B	14.7 2023	reference to currently approved DA 2020/0875 deleted. new landing and stairs shown: this DA Screen on S boundary extended. Hit of existing fence on S BDY corrected. front fence hit reduced.
		DRWG NO DA-A12-C
	issue DA	SOUTH ELEVATION

PROPOSED ALTERATIONS TO FRONT FENCE AND ENTRY
AND UNIT 4 BALCONY AND ASSOCIATED WORKS
AT 8 OCEAN ROAD
MANLY 2095
SP 14402

FOR
THE OWNERS
SP 14402

KUBANYI ARCHITECTS NSW REG 4087 DEP 0000592
LEVEL 1, 122 VICTORIA ROAD DRUMMOYNE 2047
PH 0412 500 240 JUDITHKUBANYI@IINET.NET.AU

Scale
1:100@A3

Date
April 14 2023

Drawn
jk



DRWG No DA-A12-C

SOUTH ELEVATION

issue
DA

K u b a n y i a r c h i t e c t s

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ABN 12297283746
NSW REG NO 4087
DEP 0000592

**APPLICATION MADE UNDER CLAUSE 4.6
OF MANLY LOCAL ENVIRONMENTAL PLAN 2013
TO VARY A DEVELOPMENT STANDARD.**

DEVELOPMENT APPLICATION
PROPOSED ALTERATIONS TO FRONT FENCE AND COURTYARD
TO UNIT 2, RECONSTRUCTION OF VERANDAH TO UNIT4 INCLUDING CONSTRUCTION
OF A PERGOLA OVER, ASSOCIATED MINOR WORKS TO FACILITATE INSTALLATION OF
SPRINKLER BOOSTER VALVES.
REPLACEMENT OF TILE ROOF WITH STEEL ROOFING AND REPLACEMENT OF
EASTERN AND WESTERN WINDOWS AND EXTERNAL DOORS AND BALUSTRADES.

**At: 8 Ocean Road
MANLY
SP 14402
FOR: THE OWNERS SP 14402**

April 28 2023

Approval is sought to vary a development standard set out in Manly LEP 2013

THE STANDARD TO BE VARIED IS: BUILDING HEIGHT

1.0 INTRODUCTION

Approval is sought to vary the Development Standard for Building Height set out in Clause 4.3 of the LEP on the grounds set out below. - in accordance with Clause 4.6 of the Manly LEP

2.0 VARIATION PROPOSED

The Building Height map referred to in Clause 4.3.(2) of the Manly LEP 2013 sets a maximum building height for the site of 8.5 metres.

Building height in metres is defined in the Manly LEP 2013 as:

"the vertical distance from ground level (existing) to the highest point of the building,"

The maximum permissible building height for the site is shown on the map as 8.5 metres.

The existing building has a height exceeding 8.5 metres on all elevations except the front (Ocean Road Elevation) due to site topography and its construction well before gazettal of the LEP.

The proposed work retains the existing building height on all elevations.

In particular;

- The existing roof ridges and eaves heights are unchanged.
- Existing balcony and balustrade heights are unchanged.
- Height of privacy screens on balconies are unchanged.
- There is no change proposed to the currently approved height of privacy screens located along the southern boundary (refer to DA 2020/0875), nor to the currently approved landings and stairs.

The work being carried out above the 8.5 metre height limit is primarily limited to replacement and repair to existing building elements. No increase in height of these elements is proposed and the work is located within the existing building footprint and roof plan area.

The affected elements are:

- Replacement of existing, gutters, downpipes, fascias and soffit linings.
- Replacement of non-compliant balcony balustrades 2nd and 3rd floor.
- Waterproofing and re-tiling of existing balconies including installation of concrete hobs where needed. 2nd and 3rd floor.
- Replacement of existing balcony privacy screens 2nd and 3rd floor.
- Replacement of existing E elevation windows and balcony doors.

Balconies on the Ground and first floor are all located within the 8.5 metre height limit.

On the third floor it is proposed to enlarge the existing balcony door opening on the East elevation. This does not involve any increase in existing building height or building envelope. It constitutes an alteration to an opening in an existing wall.

3.0 CLAUSE 4.6 ASSESSMENT

3.1.1 CLAUSE 4.6(1) OBJECTIVES OF CLAUSE 4.6

- (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.*
- ,

3.1.2 CLAUSE 4.6.(2) DEVELOPMENT CONSENT MAY BE GRANTED.

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.

Under section 1.4 of the Environmental Planning and Assessment Act 1979 Building Height is defined as a development standard. It is not excluded from operation.

3.1.3 CLAUSE 4.6.(3) CONSENT AUTHORITY TO CONSIDER WRITTEN SUBMISSION.

This application constitutes a written submission that seeks to justify contravention of the development standard by demonstrating that:

- a) *Compliance 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.*

3.1.4 CLAUSE 4.6(4) CONSENT AUTHORITY TO BE SATISFIED.

- a) The Consent Authority must be satisfied that:
 - (i) *the applicant's written request has adequately addressed the matters required to be satisfied 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*

These matters are addressed below.

LEP Clause 4.6 (3)(a)

That compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.

The maximum building height shown for the land on the "Height of Building Map" is 8.5 metres.

The existing building has a height in excess of 8.5 metres.

The work does not alter the height of the existing building. The works proposed retain the existing building height on all elevations and with the exception of the enlarging of an opening on the existing east wall consist of replacement and repair of existing building elements.

Works required to facilitate fire safety upgrade works are located below the 8.5 metre height limit.

It is submitted therefore that compliance with the Development Standard is unreasonable and unnecessary in this case as the following applicable objectives of the control are satisfied.

- (a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,
- (b) to control the bulk and scale of buildings,
- (c) to minimise disruption to the following—
 - (i) views to nearby residential development from public spaces (including the harbour and foreshores),
 - (ii) views from nearby residential development to public spaces (including the harbour and foreshores),
 - (iii) views between public spaces (including the harbour and foreshores),

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

Wehbe v Pittwater (2007) NSW LEC 827- 5 part test.

This is applied to demonstrate that compliance with a development Standard is unreasonable or unnecessary.

It is not necessary to establish all of the tests or “ways”. One may suffice.

In this case the first and second tests are established as discussed and demonstrated above.

FIRST	The objectives of the standard are achieved notwithstanding non-compliance.
SECOND	The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.
THIRD	The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.
FOURTH	The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary or unreasonable.
FIFTH	The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary.

The objectives of the zone (Residential R 1) are:

- To provide for the housing needs of the community.
- To provide for a variety of housing types and densities.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

The variation to building height sought is in accord with these zone objectives for the reasons set out below that detail why strict compliance with the development standard is unnecessary in this instance.

Objective 1:

The variation has no impact on the capacity of the dwelling to meet the housing needs of the community. It has no impact on the low density residential environment and does not involve any alteration to existing building height, bulk, and scale.

Objective 2:

The variation does not impact on the variety of housing types and densities. There is no alteration to housing type and density arising from the work.

Objective 3:

Not applicable.

The objectives of clause 4.3 Height of Buildings are:

- (a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,
- (b) to control the bulk and scale of buildings,
- (c) to minimise disruption to the following—
 - (i) views to nearby residential development from public spaces (including the harbour and foreshores),
 - (ii) views from nearby residential development to public spaces (including the harbour and foreshores),
 - (iii) views between public spaces (including the harbour and foreshores),
- (d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,
- (e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

The variation to building height sought is in accord with these height objectives for the reasons set out below that detail why strict compliance with the development standard is unnecessary in this instance.

Objective (a)

The existing building height and roof form is unaltered. The building remains consistent with topographic landscape, prevailing building height and does not impact on future streetscape character in the locality.

Objective (b)

The proposed work does not alter the existing bulk and scale of the building.

Objective (c)

The proposed work has no impact on

- (i) Views to nearby residential development from public spaces. (Including the harbour and foreshore.)
- (ii) Views from nearby residential development to public spaces (including the harbour and foreshores.).
- (iii) View between public spaces (including the harbour and foreshores).

Objective (d)

As the work does not alter existing building height, bulk, and scale it has no impact on solar access to public and private open spaces. Existing sunlight access to private open space and to habitable rooms of adjacent dwellings is maintained.

Objective (e)

Not applicable.

The site is not located within a recreation or environmental protection zone.

It is submitted therefore that taking into consideration the fact that the works do not increase existing building height, bulk, and scale and that with the exception of the making an enlarged opening in an existing wall, the works located above the 8,5 metre height limit comprise

replacement and repair to existing building elements, strict compliance with the development standard Building Height is unreasonable and unnecessary.

LEP Clause 4.6.(3)(b)

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

The aspect of the development that contravenes the development standards (height of building) arises from the fact that this is an existing building.

The works with the exception of the making of an enlarged opening in an existing wall consist of replacement and repair to existing building element, with no change to existing building height, bulk, and scale.

The works retain the existing status quo with respect to impacts on the locality, neighbourhood, streetscape and adjoining public and private open space and on existing adjoining buildings.

As discussed above, the carrying out of works to the existing building does not involve any change to existing bulk scale and height and does not impact on the objectives of the zone in which the building is located, nor on the objectives of the standard to be varied: Building Height.

Clause 4.6(4) (a)

The proposal is consistent with the objectives of the standard and the zone objectives for the reasons discussed above.

It is submitted that the development is in the public interest due to the nature of the work proposed and because it is consistent with the objectives of the development standard (height of building) and the objectives of the R1 zone.

CONCLUSION

It is demonstrated that strict compliance with the building standard is unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify contravening the development standard.

It is also submitted that the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.



Judith Kubanyi
KUBANYI ARCHITECTS
April 28 2023