

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 8 NOVEMBER 2023

Ashleigh Sherry
Manager Business System and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 8 November 2023
via teleconference
Commencing at 10:00 AM**

1.0	APOLOGIES & DECLARATIONS OF INTEREST	
2.0	MINUTES OF PREVIOUS MEETING	
2.1	Minutes of Development Determination Panel held 25 October 2023	2
3.0	DEVELOPMENT DETERMINATION PANEL REPORTS	4
3.1	DA2023/0455 - 1 Phyllis Street NORTH CURL CURL - Alterations and additions to a dwelling house	4
3.2	DA2022/2207 - 30 Abernethy Street SEAFORTH - Demolition works and construction of a dwelling house including swimming pool	74
3.3	DA2023/0703 - 6-7 Kara Crescent BAYVIEW - Alterations and additions to a dwelling house including a swimming pool.....	169
3.4	DA2023/1087 - 3 Lantana Avenue WHEELER HEIGHTS - Alterations and additions to a dwelling house	233
3.5	REV2023/0021 - 17 Edwin Avenue AVALON BEACH - Review of Determination of Application DA2023/0057 for demolition works and construction of a dwelling house	271

ACKNOWLEDGEMENT OF COUNTRY

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

1.0 APOLOGIES & DECLARATIONS OF INTEREST

Nil

2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 25 OCTOBER 2023

RECOMMENDATION

That the Panel note that the minutes of the Development Determination Panel held 25 October 2023 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	DA2023/0455 - 1 PHYLLIS STREET NORTH CURL CURL - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Rodney Piggott
TRIM FILE REF	2023/709160
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations 3 ↓ Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of WLEP 2011 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2023/0455 for alterations and additions to a dwelling house on land at Lot 32 DP 16602, 1 Phyllis Street NORTH CURL CURL, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0455
----------------------------	-------------

Responsible Officer:	Kye Miles
Land to be developed (Address):	Lot 32 DP 16602, 1 Phyllis Street NORTH CURL CURL NSW 2099
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Evgenia Lednyak
Applicant:	Rapid Plans Pty Ltd

Application Lodged:	21/04/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	25/08/2023 to 08/09/2023
Advertised:	Not Advertised
Submissions Received:	4
Clause 4.6 Variation:	4.3 Height of buildings: 11.8%
Recommendation:	Approval

Estimated Cost of Works:	\$ 331,760.00
---------------------------------	---------------

EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) due to a departure from the height of buildings development standard by more than 10%. The maximum height of the proposed development has been measured at 9.5 metres, which represents a variation of 11.8% to the prescribed 8.5 metre building height limit.

The application was notified in accordance with Council's Community Participation Plan to the adjoining properties. Four submissions were received raising the following issues:

- View loss
- Building height
- Overdevelopment
- Excavation
- Stormwater
- Built form non-compliances
- Eastern windows
- Property values

The 4.6 request for the non-compliance with height standard arises from the site being previously excavated for an existing basement. It has been argued within the written Clause 4.6 request that the first floor extensions over the previously excavated area creates non-compliance with the height control. However, and based on extrapolated natural ground levels the height would be compliant and measures at a maximum of 8.45 metres. The remainder of the building is under the 8.5 metre height.

Overall, it is considered that the proposal has been designed appropriately to remain compatible with the existing built form on the site and in the wider locale. The proposed additions retain the low density residential character, while being built primarily upon the existing footprint and not resulting in the removal of any significant vegetation or require significant alteration to the landform.

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

PROPOSED DEVELOPMENT IN DETAIL

Development application for alterations and additions to an existing dwelling house. The works comprise:

Lower ground floor

- Internal alterations to provide a guest room with WIR, ensuite and laundry.

Ground floor

- Demolition works, including front deck, internal walls and laundry.
- Construction of north facing deck.
- Construction of partly enclosed BBQ area.

First floor:

- Internal alteration to floor plan.
- Southern extension to provide new bedroom.
- Construction of north balcony.

Amended plans

Following a preliminary assessment of the application, Council wrote to the applicant on 11 July 2023, outlining concerns with the application.

The concerns related to streetscape, building bulk, and overdevelopment.

The applicant lodged amended plans and additional information to address the concerns on 17 August 2023

The amended plans incorporated the following changes:

- Relocate first-floor bedroom extension centrally and retain existing south facing balcony.
- Limit the extent of solid wall along the new BBQ area's western elevation, ensuring that it does not protrude above the adjacent front boundary wall.
- Reduce the depth of the north facing deck.

Community Participation Plan

The proposed amendments led to a technical height non-compliance due to the relocation of the first-floor bedroom extension to the central area of the dwelling. Consequently, formal re-notification was necessary, following the guidelines outlined in 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 Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Local Environmental Plan 2011 - 6.2 Earthworks
Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D7 Views

SITE DESCRIPTION

Property Description:	Lot 32 DP 16602 , 1 Phyllis Street NORTH CURL CURL NSW 2099
Detailed Site Description:	The subject site consists of one (1) allotment located on the southern side of Phyllis Street and the eastern side of Ian Avenue. The site is a corner allotment with a frontage of 9.2m along Phyllis Street and 34.7m along Ian Avenue. The site has a surveyed area of 481.3m². The site is located within the R2 Low Density Residential zone and accommodates a two storey dwelling house with an in-ground swimming pool and detached garage. The site slopes to the eastern boundary with an approximate fall of 1.5m. The site does not contain any significant environmental features. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by one and two storey dwellings.

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:

DA2013/1038

Development application for alterations and additions to a dwelling house, construction of a swimming pool, garage and fencing approved on 3 December 2012. This application was modified (Mod2014/0250) on 13 February 2015.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended plans. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and	(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.

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 25/08/2023 to 08/09/2023 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 4 submission/s from:

Name:	Address:
Mr Paul William Carson Mrs Caroline Elizabeth Carson	3 Phyllis Street NORTH CURL CURL NSW 2099
Mrs Anna Jane Williams	15 / 28 - 34 Roseberry Street BALGOWLAH NSW 2093
Mr Damian Peter Hendriks	10 Ozone Parade DEE WHY NSW 2099
Bruce Robertson Gordon Ms Laurence Gordon	14 Ian Avenue NORTH CURL CURL NSW 2099

The following issues were raised in the submissions:

- **View loss**
- **Building height**
- **Overdevelopment**
- **Excavation**
- **Stormwater**
- **Built form non-compliances**
- **Eastern windows**
- **Property values**

The above issues are addressed as follows:

- **View loss**

The submissions raised concerns that the proposal will result in unacceptable view loss.

Comment:

This issue has been addressed in detail under Clause 'D7 Views' in this report. In summary, a view loss assessment, in accordance with the four-part test detailed within *Tenacity Consulting v Warringah Council [2004] NSWLEC 140*, has been undertaken within this assessment report. The views from the affected properties have been described and the impacts assessed. The detailed assessment finds that the extent of view loss arising from the proposed development is considered to range from negligible to minor, which is considered acceptable within the context of the view sharing principles.

It is considered that on merit, the issues of view loss or impact does not warrant the refusal of the application.

- **Building height**

The submissions raised concerns that the proposal's building height gives rise to adverse neighbouring impacts

Comment:

An assessment of the revised Clause 4.6 variation request has been undertaken within the relevant section of this report. The assessment finds that the applicant's amended written request adequately demonstrates that strict compliance with the development standard is unreasonable, and there are sufficient environmental planning grounds to justify contravening the building height development standard. It is considered that the proposal is consistent with the aims and objectives of the R2 Low Density Residential zone and the Height of Buildings development standard under Warringah LEP 2011.

It is considered that on merit, the issues of building height does not warrant the refusal of the application.

- **Overdevelopment**

The submissions raised concerns that the proposal is an over-development of the site which will dominate the streetscape.

Comment:

Notwithstanding detailed discussions on the scale of the development (which is found to be commensurate to the lot size and surrounding developments) elsewhere in this report, it is considered that the proposed works are adequately articulated to mitigate bulk and scale impacts. In addition, the amended proposal involves reducing building bulk within both frontages, which, will assist in reducing the impact of the built form and softening the appearance of the works when viewed from the public domain. Overall, the proposal is of an acceptable design when considering the site constraints and the existing built form.

It is considered that on merit, the issues of overdevelopment does not warrant the refusal of the application.

- **Excavation**

The submissions raised concerns with the proposed excavation works and associated impacts to surrounding properties and structures.

Comment:

The proposed excavation for the lower-ground floor is minimal and contained within the existing building. In addition, the application is supported by a detailed geotechnical assessment which provides information on the site's subsurface condition and demonstrates that the proposed excavation is acceptable, subject to compliance with the recommendations made in the report.

It is considered that on merit, the issues of excavation does not warrant the refusal of the application.

- **Stormwater**

The submissions raised concerns that the additional runoff created by the proposal will unreasonably impact the properties downslope of the development.

Comment:

Recommended conditions of consent will require the applicant to comply with Council's Water Management for Development Policy to ensure acceptable stormwater management.

It is considered that on merit, the issues of stormwater does not warrant the refusal of the application.

- **Built form non-compliances**

The submissions raised concerns that the proposal results in numerous built form non-compliances.

Comment:

It is acknowledged that the proposal includes built form non-compliances relating to the Wall Height, Building Envelope, and Front Setback of the DCP. As such, the merits of these non-compliances have been assessed against the objectives of the relevant controls. In summary, the works are found to be consistent with the objectives of these controls, as the proposal has responded appropriately to the site constraints, while remaining compatible with the existing

built form and not giving rise to any adverse amenity impacts.

It is considered that on merit, the issues of built form non-compliances do not warrant the refusal of the application.

- **Eastern windows**

The submissions raised an observation that the eastern first floor windows could be reduced to limit the view of No. 3 Phyllis Street's roof.

Comment:

The above observation is noted, however, given that the proposed windows do not result in any adverse impacts no changes to the design is recommended in this regard.

- **Property values**

The submissions raised concerns that the proposal will impact surrounding property values.

Comment:

This matter is not a relevant consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The proposal is supported with regard to landscape issues. The application is assessed by Landscape Referral against Warringah Local Environmental Plan 2011 and the following Warringah Development Control Plan 2011 controls (but not limited to): • D1 Landscaped Open Space and Bushland Setting • E1 Preservation of Trees or Bushland Vegetation The proposed alterations and additions are contained to the existing building footprint and associated hardstand areas. The existing significant non-compliance with landscaped open space will not be further reduced. Should the Development Application be approved, all trees and vegetation shall be retained and protected during works.
NECC (Bushland and Biodiversity)	The proposal seeks approval for alterations and additions to a single dwelling. The comments in this referral relate to the following applicable controls and provisions: • SEPP (Hazards and Resilience) - Chapter 2 Development in the coastal environment • Warringah DCP Clause E2 Prescribed Vegetation • Warringah DCP Clause E4 Wildlife Corridors

Internal Referral Body	Comments
	Warringah DCP Clause E6 Retaining unique environmental features The proposed alterations and additions would take place on a heavily disturbed site, impacts to native flora and fauna are highly unlikely. 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.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A489653 dated 28 February 2023).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

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

Comment:

The proposal was referred to Ausgrid who 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 site is located within the Coastal Environment Area.

The changes proposed to the existing dwelling are such that no impact will occur which adversely affect the matters raised in points (a) to (g). Conditions are also imposed to appropriately address

construction activity such as structural adequacy and excavation work and erosion/sediment control to ensure that the development will not adversely affect the matters raised in Points (a) to (g).

- 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 development is designed, sited and will be managed (subject to condition) to avoid an adverse impact referred to in sub-clause (1).

Division 4 Coastal use area

2.11 Development on land within the coastal use area

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

Comment:

The development has been designed to ensure that no adverse impact will be caused to the matters raised in Point (a)(i) to (v).

Therefore, Council is satisfied that the development has been designed, sited and will be managed (subject to condition) to avoid any adverse impact referred to in Point (a).

This assessment has considered the development against the applicable standards and controls to take into account the bulk, scale and size of the development within the surrounding coastal and built

environment.

Division 5 General

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

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

Comment:

The proposed development is largely internal, and therefore it is not foreseen that the works would cause an increased risk or coastal hazards on the site itself or other land. No further assessment on this matter is required.

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:

Not applicable.

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

Chapter 4 – Remediation of Land

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.5m (Master bedroom) 8.8m (Bedroom 4)	11.8% 3.5%	No

Compliance Assessment

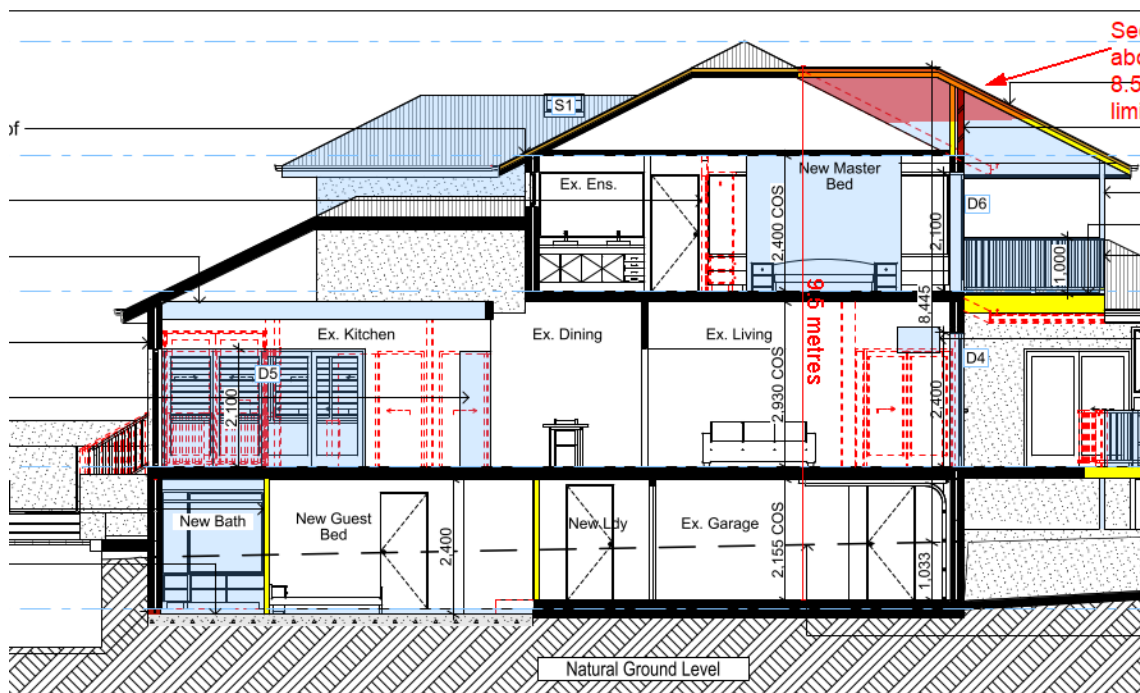
Clause	Compliance with Requirements
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.5m (Master bedroom) 8.8m (Bedroom 4)
Percentage variation to requirement:	3.5% - 11.8%



SECTION 1

Figure 1. Building height diagram - master bedroom non-compliance.

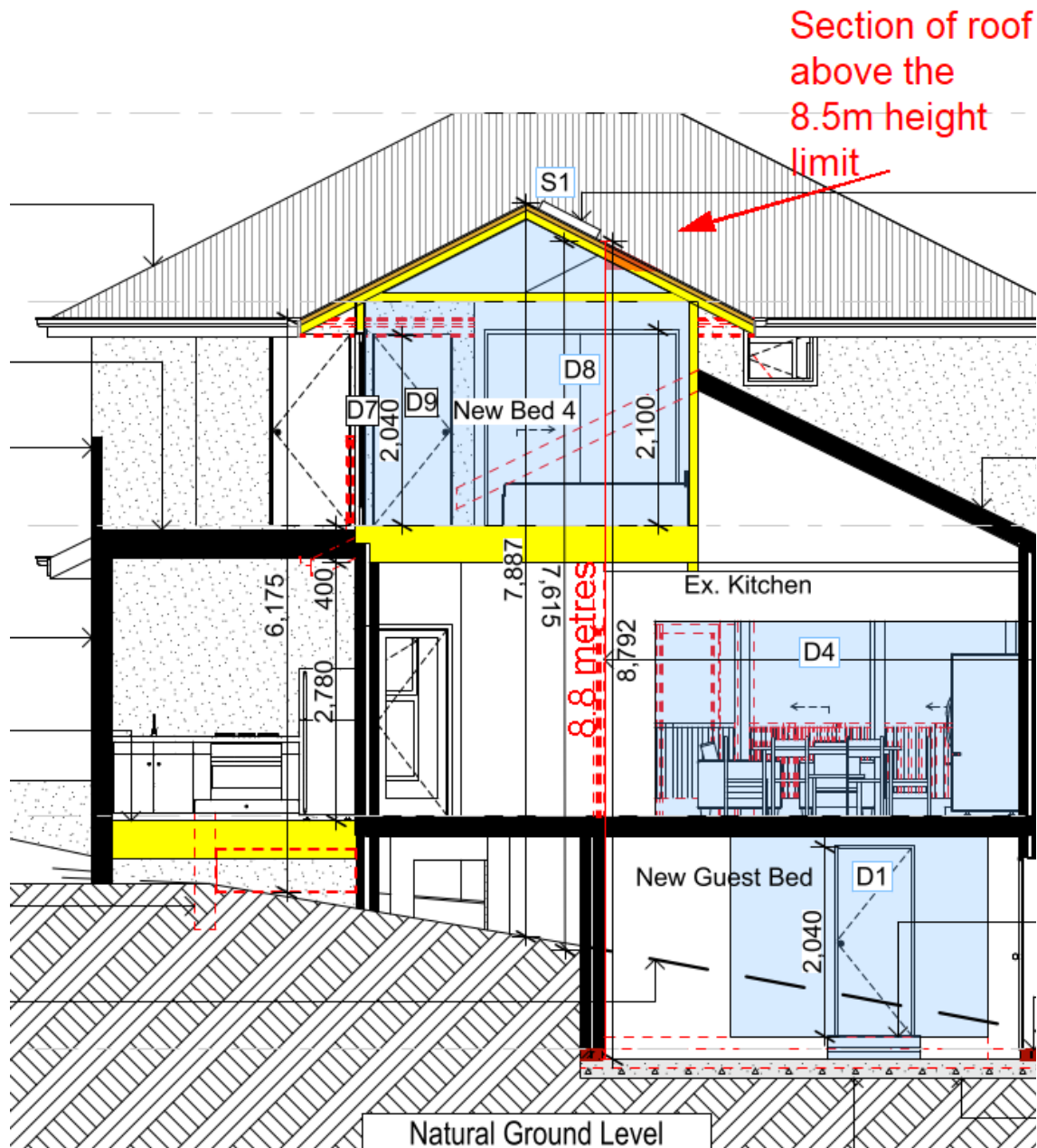


Figure 2. Building height diagram - bedroom 4 non-compliance.

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 judgements contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

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

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

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

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

Comment:

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

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required

by cl 4.6(3)(a).

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- *The variation in this case is unreasonable as the proposed roof is well below the existing main ridge height as its reference is to the excavated garage and lower ground floor area level. If the method of measuring from the natural ground level were to be used, we would have a compliant dwelling in terms of height. Ref, Bettar v Council of City of Sydney [2014] NSWLEC 1070 is adopted using the natural ground levels located on the western and southern elevation,*

we would also see compliance reached with the remainder of the new roof clear of the height limit.

- The proposed upper floor works are moderate in nature and maintain the existing built form and character of the site. The proposed works will be in keeping with the existing character and the desired future development in the area. This design limits the impact on the local environment through the use of a conventional roof design.*
- This style of design limits any potential impacts that a more substantial addition would create, with this design limiting new windows to reduce impacts on views from adjoining dwellings with little impact from the public domain.*

The applicant's justification is agreed with. The extent of the non-compliance is limited to minor areas of the pitched roof of the first floor extensions. Also, it is acknowledged that the non-compliance is largely consequence of the site being previously excavated to allow for the existing basement and that the proposal is measured at 8.45 metres when taken from the extrapolated natural ground levels. Furthermore, it is also considered that the minor noncompliance will not; give rise to any adverse amenity impacts or result in unreasonable streetscape impacts, particularly as the first floor has been design to integrate into the existing dwelling's roof form.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

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

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

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

Comment:

The projections above the 8.5 metres height limit are limited to the front and rear of the building with minor areas of the pitched roof (demonstrated in figures 1 and 2 above). As above, this is largely consequence of existing excavation and the proposal would comply if measured from the extrapolated natural ground levels. Notwithstanding, the proposed first floor extension has been amended to provide a generous secondary front setback so that the additions are adequately concealed behind the existing balcony. Overall, the proposed height is considered to be compatible and commensurate with the existing built form and therefore, remains consistent with the height and scale of surrounding and nearby development.

The development satisfies this objective.

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

Comment:

With regards to view loss, a detailed assessment has been carried out within D7 Views of this report, which has considered the proposals impacts on public and private views. In summary, it was determined that due to the location of the non-compliant roof areas there would be no adverse impacts on the maintenance of public and private views, while the proposal as a whole was considered to achieve a reasonable sharing of views.

The applicant has submitted shadow diagrams and detailed analysis of the overshadowing impact of the development and Council are satisfied that the adjoining site's will receive solar access to living room windows and private open space in accordance with the Warringah DCP.

The development contains modest windows on the side elevations to limit overlooking.

The development satisfies this objective.

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

Comment:

The proposed works will be carried out above existing hard surfaces and will not involve the removal of any significant vegetation. Therefore, the proposed development will not detract the scenic quality of Warringah's coastal and bush environments.

The development satisfies this objective.

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

Comment:

The proposal has been appropriately sited and articulated to minimise the visual impact when

viewed from public places.

The development satisfies this objective.

Zone objectives

The underlying objectives of the R2 Low Density Residential zone:

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

Comment:

The development will continue to provide for the housing needs of the community within a low density residential environment.

It is considered that the development satisfies this objective.

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

Comment:

This is not applicable to the proposed development.

It is considered that the development satisfies this objective.

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

Comment:

The proposed development maintains sufficient landscaped area within the rear setback area to compliment the landscaped setting locality and is consistent with the objective.

It is considered that the development satisfies this objective.

Conclusion:

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

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

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

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

and in accordance with correspondence from the Deputy Secretary on 2 November 2021, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Height of building Development Standard associated with a single dwelling house (Class 1 building).

6.2 Earthworks

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

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

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

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

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

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

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

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

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

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

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

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

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

- (f) the likelihood of disturbing relics*

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

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

Comment: The proposed earthworks as conditioned will not result in any adverse impacts to nearby environmentally sensitive areas.

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

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	8.1m	12.5%	No
B3 Side Boundary Envelope	5m - East	Two encroachments up to 1.3m	26%	No
	5m - South	No encroachments	N/A	Yes
B5 Side Boundary Setbacks	0.9m - East	1.3m (First floor balcony)	N/A	Yes
	0.9m - South	13.6m (Ground floor deck)	N/A	Yes
B7 Front Boundary Setbacks (Phyllis Street)	6.5m	5.5m (Ground floor deck) 6.5m (First floor balcony)	15.4% N/A	No Yes
B7 Secondary Front Boundary Setbacks (Ian Avenue)	3.5m	1.2m (Ground floor deck)	65.7%	No
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	15% or 72.9m ² (existing)	N/A	N/A

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	Yes
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

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
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
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of non-compliance

The DCP requires a maximum wall height of 7.2 metres. The proposed development has a maximum wall height of 8.1 metres at its highest point.

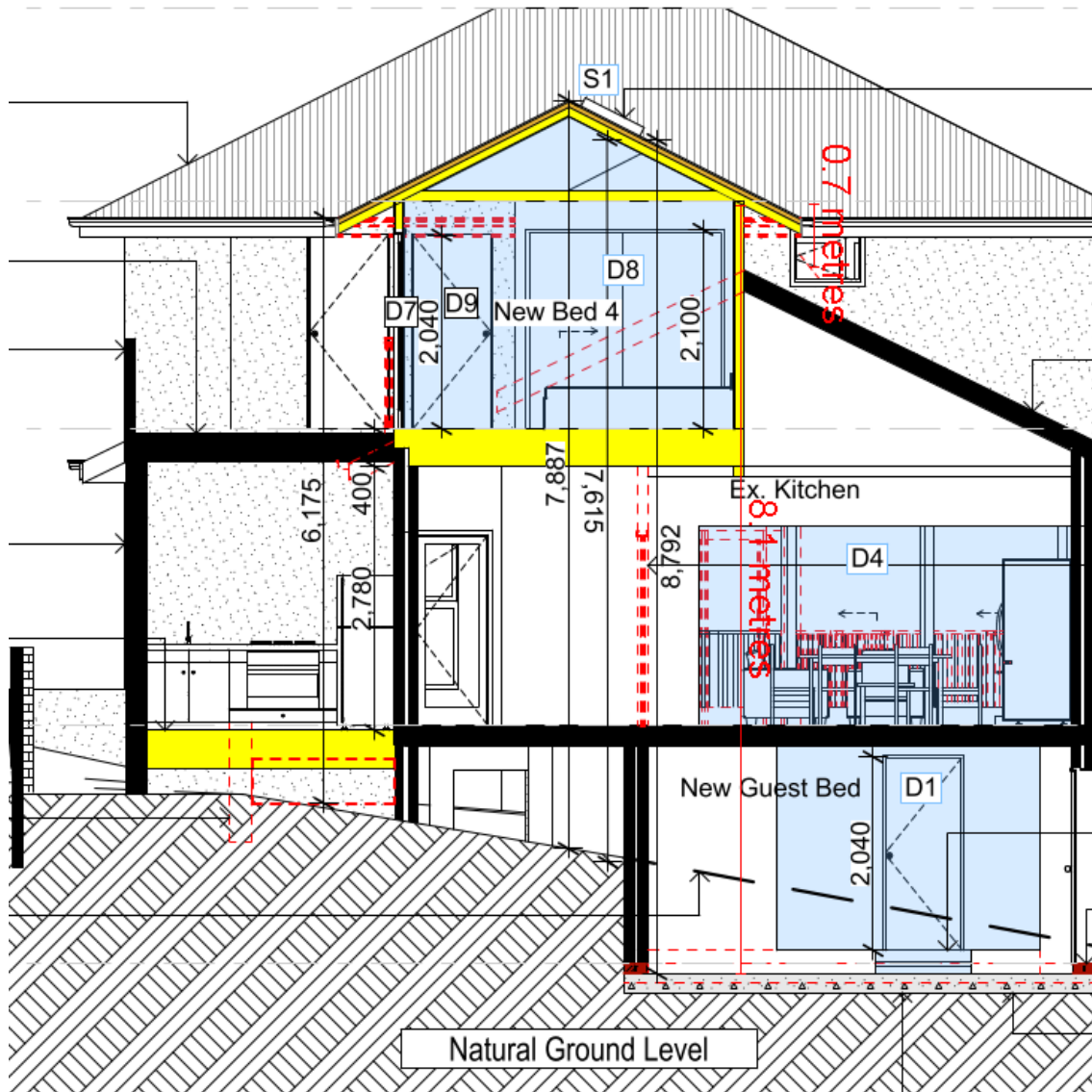


Figure 3. Wall height non-compliance.

Merit consideration:

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

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

Comment:

The non-compliance with the wall height control is specific to the eastern wall plane of the rear first-floor extension. It's important to note that the non-compliant wall is primarily internal, with only a 0.7-metre external element protruding above the existing roof line. These non-compliant elements, situated on the eastern side of the building, are not expected to significantly impact the streetscape. Moreover, the proposed height aligns with the existing detached development in the area and is unlikely to result in any visually disruptive effects.

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

Comment:

The proposed addition is located beneath the existing tree canopy level within the locality. In addition, the proposal does not involve any changes to significant landscaping across the site.

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

Comment:

The provision of view sharing is discussed later in this report under Part D7. In summary, the proposal as a whole has been found to achieve reasonable view sharing.

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

Comment:

The proposal achieves acceptable building separation with generous side boundary setbacks. In addition, the portions of the development that exceed the maximum wall height do not contain any intrusive windows nor do they create unacceptable privacy or overshadowing impacts. Further, the proposal's low roof pitch minimises overshadowing impacts to adjacent living rooms and private open space on the winter solstice (June 21). Overall, the proposed non-compliance is largely as consequence from the site being previously excavated for the existing ground floor, and would comply if measured from extrapolated natural ground levels. Notwithstanding, the proposal has been suitably designed to minimise the impact of development on adjoining and nearby properties.

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

Comment:

The proposed addition will be largely located above the existing building footprint and does not involve any significant earthworks. Overall, the proposal responds appropriately to the site's topography.

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

Comment:

Sufficient scope has been provided to enable the innovative roof form.

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

with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

B3 Side Boundary Envelope

Description of non-compliance

WDCP requires buildings to be sited within a building envelope determined by projecting planes at 45 degrees from 5.0 metres above ground level (existing) at the side boundaries. The proposal encroaches the prescribed envelope on the eastern boundary.

The proposal has two encroachments on the western elevation as listed below:

- Master bedroom windows - sized 1.3 metres in height for a length 4.2 metres. This represents a variation of 26%.
- Master bedroom balcony - between 0.1 metres and 0.2 metre for a length of 1.3 metres. This represents a maximum variation of 4%.

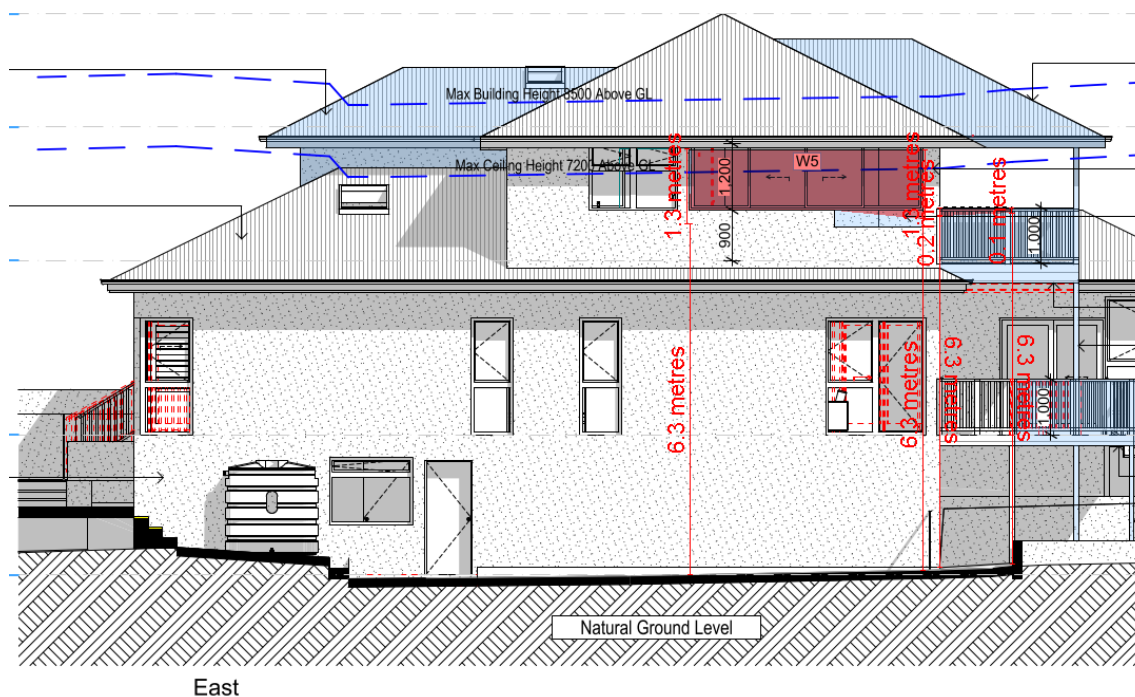


Figure 4. Extent of eastern side boundary envelope non-compliances.

Merit consideration

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

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

Comment:

The encroachments outside of the prescribed envelope is consequent of following the existing building lines of the house. By way of following the existing building line of the house, it is found that the development has a lesser visual dominance compared to a scheme that did comply, which would result in an awkward building step that would draw more attention to the wall than what is proposed. Notwithstanding this, the proposal is appropriately articulated using recessed and modulated walls, fenestration, open balconies, eaves and changes in materials to break up built form. Overall, the proposal is not of an excessive scale and is designed in a contextually appropriate way to ensure it is congruent to the North Curl Curl streetscape.

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

Comment:

The spatial separation proposed between buildings is considered appropriate within the low density setting. In addition, the variations sought to the side boundary envelope do not result in any objectionable overlooking. Furthermore, the submitted shadow diagrams demonstrates compliance with WDCP's access to sunlight control. Overall, it is considered that the proposal ensures adequate light, solar access and privacy by providing reasonable spatial separation between buildings.

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

Comment:

The building makes appropriate level changes where required and is considered to respond appropriately to the topography of the site.

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

B7 Front Boundary Setbacks

Description of non-compliance

This control requires development to be setback at least 6.5 metres from the front boundary and for corner allotments, 3.5 metres from the secondary frontage. It is considered in this instance that the northern boundary to Phyllis Street is the primary frontage and the western boundary to Ian Avenue is the secondary frontage, given the orientation and design of the existing dwelling.

The proposed north facing deck is set back at a minimum of 5.5 metres from the Phyllis Street boundary. The ground floor BBQ area is set back 1.2 metres from the Ian Avenue boundary.

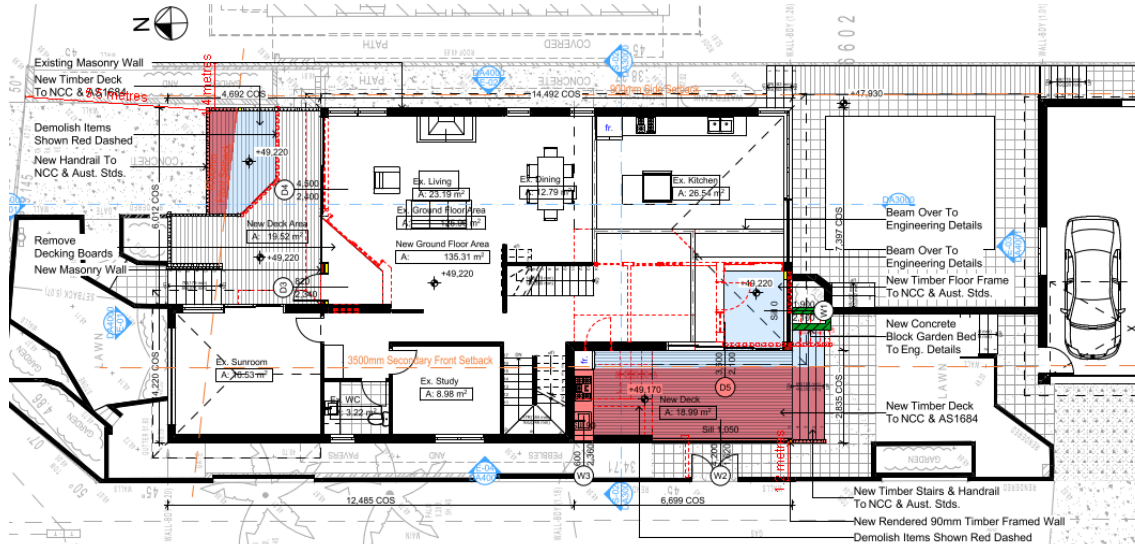


Figure 5. Front setback non-compliance.

Merit consideration:

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

- *To create a sense of openness.*

Comment:

The proposal is not expected to lead to an unacceptable reduction of openness since the development is ancillary and falls within the existing front setbacks. Moreover, the proposed BBQ area has been amended to restrict the extent of the rendered brick wall, ensuring that it does not project above the adjacent front boundary wall. The elements above the existing front boundary wall consist of open louvers and lightweight timber framing.

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

Comment:

The subject site, being a corner allotment, maintains visual continuity with No. 2 Phyllis Street, notably due to the existing reduced setback to Ian Avenue. Moreover, the positioning and setback of the north-facing deck align with the site's established building lines along Phyllis Street. Notably, the proposal does not necessitate any significant landscaping modifications, as the works will be completed above existing built surfaces.

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

Comment:

The design of the proposal will modernise the appearance of the dwelling, which will contribute to the already diverse streetscape (by virtue of architecture and construction). The development is considered to be complementary and enhancing to the visual quality of the

streetscape.

- *To achieve reasonable view sharing.*

Comment:

As discussed later in this report the proposal will achieve reasonable view sharing.

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

D1 Landscaped Open Space and Bushland Setting

The proposal retains the existing building footprint, therefore not reducing the existing non-compliant LOS (15%). Within the context of the site and relatively minor works, the existing variation is supported on merit.

D7 Views

Merit consideration

Multiple submissions received from nearby properties along Ian Avenue raised concern regarding potential view loss as a result of the proposed development. Height poles were erected and certified for accuracy. View loss inspections were undertaken at the following properties:

- No.16 Ian Avenue.
- No.18 Ian Avenue.

*It must be noted that a submission was received from No.14 Ian Avenue, which, indicated that the proposal would have view impacts. However, site access could not be obtained.



Figure 6: Site context map, subject site highlighted in blue.

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

- To allow for the reasonable sharing of views.

Comment:

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

1. Nature of the views affected

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

Comment to Principle 1:

No. 16 Ian Avenue:

This property is across street to the west of the subject site. There is currently a two-storey dwelling house that enjoys views to the north, east and south across an approximate 180-degree arc. The views include landmarks such as Long Reef Headland and North Head, associated foreshore areas and the ocean.

No. 18 Ian Avenue:

This property is across street to the west of the subject site. There is currently a two-storey dwelling house that enjoys views to the northeast, east and south across an approximate 135-degree arc. The views include landmarks such as North Head, associated foreshore areas and the ocean.

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

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

Comment to Principle 2:**No. 16 Ian Avenue:**

This property enjoys views across the street, over the western front boundary of the subject site. These views are obtained from both a standing and seated position from internal and external areas of the dwelling on the first floor from the dining and living room areas, as well as the external balcony, as indicated in the following figures:



Figure 7: Unaffected view - Balcony facing north on the first floor, across the side boundary from a standing position.



Figure 8: Affected view - Balcony facing east on the first floor, across the front boundary from a standing position. Please note that the height poles reflect the original design and have not been updated to align with the amended plans, particularly in relation to the rear extension.



Figure 9: Unaffected view - Balcony facing south on the first floor, across the side boundary from a standing position.

No. 18 Ian Avenue:

This property enjoys views across the street, over the western front boundary of the subject site. These views are obtained from both a standing and seated position from internal and external areas of the dwelling on the first floor from the dining and living room areas, as well as the external balcony, as indicated in the following figures:



Figure 10: Unaffected view - Balcony facing northeast on the first floor, across the side boundary from a standing position.



Figure 11: Affected view - Balcony facing east on the first floor, across the front boundary from a standing position. Please note that the height poles reflect the original design and have not been updated to align with the amended plans, particularly in relation to the rear extension.



Figure 12: Unaffected view - Balcony facing south on the first floor, across the side boundary from a standing position.

3. Extent of impact

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

Comment to Principle 3:

No. 16 Ian Avenue:

As indicated in the figures above (Figures 7 - 9), this property has expansive ocean views that are obtained over the northern side boundary, eastern front boundary, and southern side boundary from the first floor of this dwelling.

The dwelling is two storey and generally orientated to the east. The kitchen, living, dining and outdoor entertaining areas are sited in the eastern portion of the first floor.

As detailed in Step 1, and visually represented in Step 2, the views over the side boundaries (north and south) include partial views of Long Reef Headland and North Head, associated foreshore areas and the ocean. These views will not be impacted by the proposed development.

From the first floor balcony (see Figure 8), the view loss from this area includes a reduction of ocean views and the horizon. However, the view loss varies from certain positions, with impacts occurring on the southern side when viewing east and minimal impacts, when viewed from the northern end. In this regard, the view loss upon individual vantage points throughout No. 16 Ian Avenue ranges from negligible (no impact) to minor.

No. 18 Ian Avenue:

As indicated in the figures above (Figures 10 - 12), this property has expansive ocean views that are obtained over the northern side boundary, eastern front boundary, and southern side boundary from the first floor of this dwelling.

The dwelling is two storey and generally orientated to the east. The internal living and outdoor entertaining areas are sited in the eastern portion of the first floor.

As detailed in Step 1, and visually represented in Step 2, the views over the side boundaries (north and south) include partial views of North Head and the ocean. These views will not be impacted by the proposed development.

From the first floor balcony (see Figure 11), the view loss from this area includes a reduction of ocean views and the horizon. However, the view loss varies from certain positions, with impacts occurring on the southern side when viewing east and minimal impacts, when viewed from the northern end. In this regard, the view loss upon individual vantage points throughout No. 18 Ian Avenue ranges from negligible (no impact) to minor.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

Clause D7 Views and the intent of Tenacity goes towards the idea of view sharing - rather than view retention. The proposed development is not assessed as having any 'devastating' impacts as it will not block the entirety of anyone's views. However, it is noted that the proposal will result in the loss of views that are clearly important and valuable to the residents surrounding residents.

In answering the question of 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, the proposal has maintained acceptably sized view corridors both side of the development. The loss of views are primarily a result of the previous approved works. Overall, the proposal itself is acceptable and will result in a reasonable sharing of views.

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

Comment:

As outlined in the above assessment, the proposal is an innovative design solution that is a good compromise between adding floor space on the upper level of the existing development and minimising view loss.

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

Comment:

No tree removal is proposed under this application.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$3,318 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$331,760.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;

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

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

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

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

Council is satisfied that:

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

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

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

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

The issues raised in the submissions are considered to be addressed by way of the amended plans and conditions of consent.

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

Accordingly, the application is referred to the DDP with a recommendation for approval. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

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

RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2023/0455 for Alterations and additions to a dwelling house on land at Lot 32 DP 16602, 1 Phyllis Street, NORTH 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
DA1004 - Rev4: Site Plan	14 August 2023	Rapid Plans
DA1008 - Rev4: Demolition Lower Ground Floor Plan	14 August 2023	Rapid Plans
DA1009 - Rev4: Demolition Ground Floor Plan	14 August 2023	Rapid Plans
DA1010 - Rev4: Demolition First Floor Plan	14 August 2023	Rapid Plans
DA2001 - Rev4: Lower Ground Floor Plan	14 August 2023	Rapid Plans
DA2002 - Rev4: Ground Floor Plan	14 August 2023	Rapid Plans
DA2003 - Rev4: First Floor Plan	14 August 2023	Rapid Plans
DA2004 - Rev4: Roof	14 August 2023	Rapid Plans
DA3000 - Rev4: Section 1	14 August 2023	Rapid Plans
DA4000 - Rev4: Elevations 1	14 August 2023	Rapid Plans
DA4001 - Rev4: Elevations 2	14 August 2023	Rapid Plans

DA5001 - Rev4: Schedule of Finishes	14 August 2023	Rapid Plans
-------------------------------------	----------------	-------------

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Report	9 March 2023	AscentGeo

- 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	28 April 2023

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

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

3. **No Approval for Secondary Dwelling**

No approval is granted or implied under this Development Consent for the use of any part of the dwelling house for the purpose of a secondary dwelling or separate occupancy. Built in cooking facilities are not permitted to be installed, other than those shown in the designated kitchen area.

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

4. **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.

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 \$3,317.60 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 \$331,760.00.

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

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

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

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

7. Security Bond

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE**8. Stormwater Drainage Disposal**

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

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

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

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

Reason: To ensure satisfactory management of stormwater.

9. **Compliance with Standards**

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

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

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

10. **Sydney Water "Tap In"**

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

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

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

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

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

DURING BUILDING WORK

11. **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.

12. Removing, Handling and Disposing of Asbestos

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998)];
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

13. Geotechnical Requirements

All recommendations (if any) included in the Geotechnical Report referenced in Condition 1 of this consent are required to be complied with during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

14. Survey Certificate

A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements, floor levels and the finished roof/ridge height are in accordance with the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier when the external structure of the building is complete.

Reason: To demonstrate the proposal complies with the approved plans.

15. 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.

16. Waste Management During Development

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

17. Stormwater Drainage Disposal Certification

Certification from an appropriately qualified and practising Civil Engineer demonstrating the stormwater drainage systems have been designed and installed in accordance with the requirements of Council's Water Management for Development Policy and where relevant a Geotechnical Engineer shall be provided to the Principal Certifier prior to the issue of an Occupation Certificate, and;

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

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

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

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

Reason: To ensure satisfactory management of stormwater.

18. Waste Management Confirmation

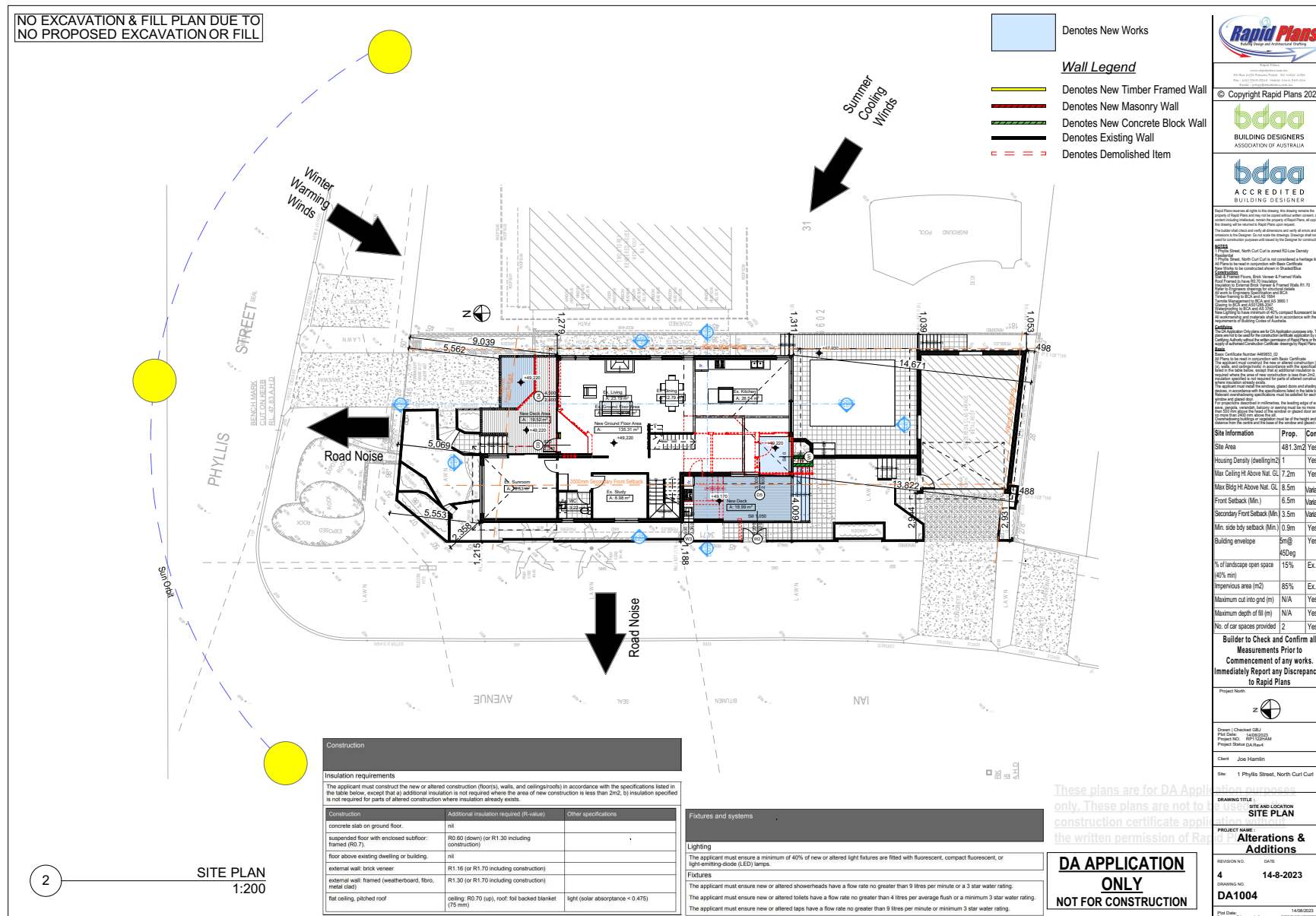
Prior to the issue of an Occupation Certificate, evidence / documentation must be submitted to the Principal Certifier that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with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

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

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES**19. Geotechnical Recommendations**

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

Reason: To ensure geotechnical risk is mitigated appropriately.







Clause 4.6 Variation To Development Application 1 Phyllis Street North Curl Curl NSW



**Clause 4.6 Variation
To Development Application
For
1 Phyllis Street,
North Curl Curl
NSW
For
Joe Hamlin**

RAPID PLANS

ABN:	43150064592
TELEPHONE:	(02) 9905-5000
EMAIL:	gregg@rapidplans.com.au
Builders Lic No:	82661C
Accreditation No:	6305

Issue 2.00
© RAPID PLANS
14/08/2023

TABLE OF CONTENTS

1	INTRODUCTION	3
1.1	Site	3
1.2	Local Authority	3
1.3	Environmental Planning Instrument that Applies to the Land.....	4
1.4	Zoning of the land	4
1.5	Objectives of the Zone	4
2	Clause 4.6 Variation to Development Application	4
2.1	Development Standard Being Varied	5
2.2	Clause of the Development Standard listed in the Environmental Planning Instrument	5
2.3	Objectives of the Development Standard	5
2.4	Numeric value of the development standard in the environmental planning instrument	6
2.5	Proposed numeric value of the development standard in your development application.	6
2.6	Percentage variation between the proposal and the environmental planning instrument	6
2.7	How is strict compliance with the development standard unreasonable or unnecessary in this particular case?.....	6
2.8	How would strict compliance hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act?	10
2.9	Is the development standard a performance-based control?	10
2.10	Would strict compliance with the standard be unreasonable or unnecessary?.....	11
2.11	Are there sufficient environmental planning grounds to justify contravening the development standard?.....	11
	CONCLUSION	15
2.12	Summary	15

1 INTRODUCTION

This report pertaining to Clause 4.6 Variation accompanies the Development Application for the proposed alterations & additions at 1 Phyllis Street, North Curl Curl

1.1 Site

The residence is located on the southern side of Phyllis Street in the residential neighbourhood of North Curl Curl

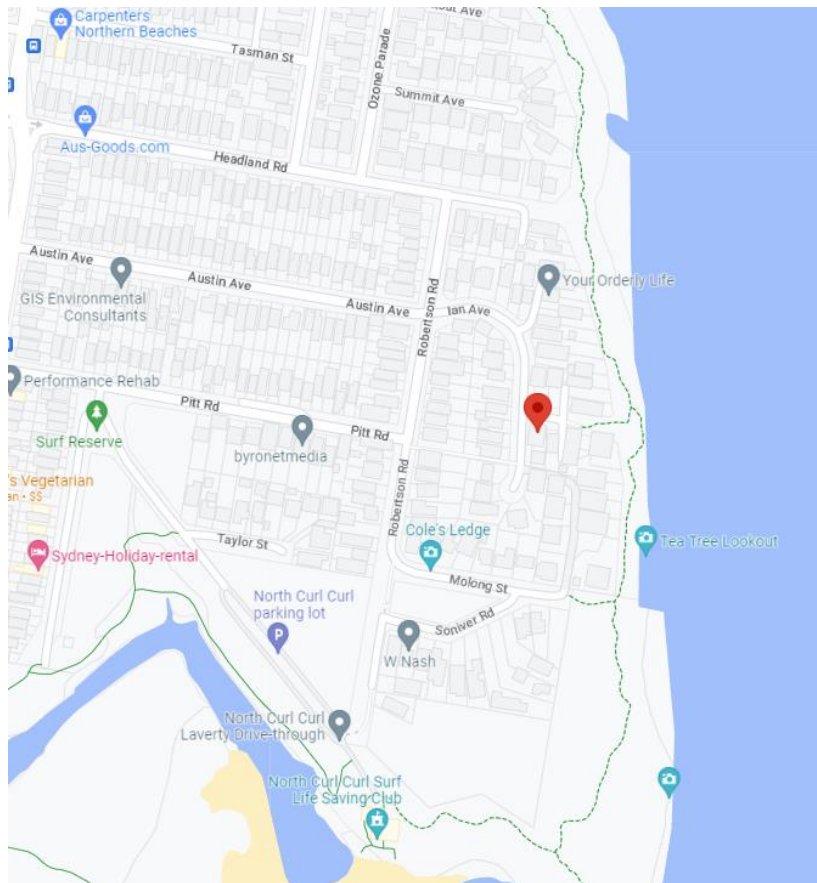


FIGURE 1: LOCATION PLAN 1 Phyllis Street, North Curl Curl. Source Google Maps.

1.2 Local Authority

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

1.3 Environmental Planning Instrument that Applies to the Land

Warringah Local Environment Plan 2011

1.4 Zoning of the land

R2 Low Density Residential

1.5 Objectives of the Zone

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

Comment:

It is considered that the proposed development meets the objectives of the Zone R2 Low-Density Residential. This opinion is justified on the basis that this application provides for the owner's housing needs within the low-density area that is consistent with surrounding properties elevated developments. The proposal allows currently unusable areas to be usable for the owners to assist in day to day living without adversely impacting the low-density environmental aspects as no substantial vegetation is proposed for removal. The works proposed will significantly improve the design and aesthetic quality of the site with the built form outcome complimenting newer style properties along Headland Road.

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

2 Clause 4.6 Variation to Development Application

4.6 Exceptions to development standards

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

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

2.1 Development Standard Being Varied

After reviewing Warringah LEP 2011 we advised that a Clause 4.6 Exception to Development Standard is required due to:

- This development is classified as a non-complying development. This is due to the excavated external levels and level located within the existing excavated garage and lower ground floor being over the 8.5m building height
- The favourable option for Council is a Development Application with a Clause 4.6 Variation for the structures to be considered for approval.

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

- Warringah LEP 2011 Part 4 4.3 Height of Buildings

2.3 Objectives of the Development Standard

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

Comment:

It is considered that the proposed development meets the objectives of the height of buildings development standard. This opinion is justified on the basis that this application is compatible with surrounding properties that have similar height & scale. The visual impacts are minimised as there is existing vegetation used to soften the streetscape from the public domain as well "tiering" the stories, and ground floor entry deck to articulate each floor from Phyllis Street. This provides access to the dwelling and assists in maintaining the scenic quality of the North Curl Curl area. With the existing location of the subject & adjacent dwellings enjoying an elevated position there is minor impact of view lines with privacy improved as well as the shadow cast from the proposed works having only a minor impact on the adjacent properties. This provides a stepping down the site slope in a northerly direction

following the existing topography, this assisting in maintaining the scenic quality & built form of the North Curl Curl area. With the existing location of the subject & adjacent dwellings enjoying an elevated position there are ample view lines and privacy as well as the shadow cast from the proposed works having minimal impact on surrounding properties.

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

WLEP2011 Height = 8.5m

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

Proposed Height = 9.478m Existing Excavated Ground (Measured at the highest point of upper floor new roof-Front)

Proposed Height = 8.445m Natural Ground level. (Measured from the highest point of the dwellings new roof-Front)

Proposed Height = 8.792m Existing Excavated Ground (Measured at the highest point of upper floor new roof-Bed 4)

Proposed Height = 7.615m Natural Ground level. (Measured from the highest point of the dwellings new roof-Bed 4)

2.6 Percentage variation between the proposal and the environmental planning instrument

Proposed Height Front = 11.5% (Existing Ground Level)

Proposed Height Bed 4 = 3% (Existing Ground Level)

Natural Ground Level is clear at front & at Bed 4.

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

The variation in this case is unreasonable as the proposed roof is well below the existing main ridge height as its reference is to the excavated garage and lower ground floor area level. If the method of measuring from the natural ground level were to be used, we would have a compliant dwelling in terms of height. Ref, Bettar v Council of City of Sydney [2014] NSWLEC 1070 is adopted using the natural ground

levels located on the western and southern elevation, we would also see compliance reached with the remainder of the new roof clear of the height limit.

This variation is considered moderate in comparison to other recent developments in the Curl Curl area. This application is in keeping with a low-density residential environment desired by Council in this area as well as the objectives of the zone. The development has no negative consequence of significance as a result of this noncompliance, further it meets the objectives of the development standard, and therefore strict compliance with the development standard would be unreasonable and unnecessary.

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

- *Streetscape* – The visual quality of the streetscape is to be enhanced with the alterations to the property improving the bulk in keeping with the adjacent property with the proposed landscaping maintained to complement the existing built form along Phyllis Street. The height encroachment for the upper floor is to the front of the block, with the intention for the rear addition to the dwelling to match the existing and surrounding designs & present a dwelling that is consistent front to back. The proposed roof does not increase the existing overall roof height, as it is lower than the existing main ridge line and does not detract from the streetscape along Phyllis Street as a generally conventional pitched roof is used to maintain pitch & height. The proposed additions provide a generally consistent pattern of development with regard to adjoining building setbacks, and as such, the proposal will not result in any visually prominent element that will result in an unreasonable impact on the streetscape & is not out of character for the neighbourhood. These characteristics conform to the R2 low density residential requirements for the North Curl Curl area & the desired future character of the area.
- *Bulk & Scale* is maintained for the area. Although the bulk & scale of the overall building is slightly improved, the overall size & bulk in relation to the

surrounding neighbourhood is to be maintained throughout the development as shown by the similar development on the adjacent northern property below.



FIGURE 2: Adjacent properties, Phyllis Street, North Curl Curl. Source Google Maps.

There is minimal visual impact with surrounding developments to maintain their existing visual amenity. The new roof that has been added to the design matches the existing to maintain the bulk & scale of the roof line & to prevent the design from visually dwarfing surrounding properties as the overall roof height is maintained at its highest point with the proposed roof line substantially lower. It is in our opinion that the new roof pitch design allows for a seamless finish and for a more appealing streetscape, with the design in keeping with other properties along Phyllis Street.



FIGURE 3: Existing property facade, 1 Phyllis Street, North Curl Curl Source Realestate.com

The existing topography & built form prevents the proposed ridges from adhering to the 8.5m building height. This is largely due to the existing dwelling being previously excavated. The proposal is a design option that supports a preferred planning outcome of a modern design, that is prevalent in the North Curl Curl area, as well as complimenting the existing dwelling & the surrounding neighbourhood.

In addition, the proposed works are justified as the addition visually maintains the bulk of the upper portion of the dwelling without adversely affecting the streetscape. The intention is to provide a balance between the proposed additions to the existing built form with the majority of the improvements minor in nature.

- Openness - A sense of openness has been maintained with existing landscaping to the front of the property with the proposed new decks to integrate in with the exiting dwelling. The proposed design to the upper portion of the dwelling allows the low levels to create flow between the internal & open space areas for the owners with minor elements of the proposal over the height limit due to the excavated areas, to continue to allow for a sense of openness to support the desired future character of the North Curl Curl low density area. The openness to the front of the property is maintained with the landscaped area & access to compliment the proposed structures to assist in adequate usable outdoor open space.

- *Public & Private Views* - The view lines are generally maintained for the subject & surrounding dwellings with minimal impact in the vicinity of the height encroachment, with substantial separation to the surrounding dwellings & maintained view lines from the dwellings to north and west.
- *Site Access & Circulation* is improved with vehicular access maintained to Phyllis Street to allow for parking & the pedestrian stair access and a path and grassed area to the front door. The proposed decks on the ground floor provides access & circulation to the front and rear entry for the owner. It is anticipated that the proposed development will have no detrimental impact on traffic flow.
- *Planting* – There has been generous amount of area maintained for the provision of planting in the front & rear areas of the property. The proposal enhances the amenity of the site by providing a usable garden space that softens the visual amenity of the front of the property. The proposed works to the front of the property are in keeping with the adjacent properties. The existing vegetation softens the streetscape & allows the development to blend in with the existing environment along Phyllis Street.

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

The proposal extends the existing built form of the subject property with well-designed additions improving on the existing dwelling & maintains landscaping onsite. The proposed works add to the dwellings along Phyllis Street, and as such strict compliance in this regard would limit the objectives being fully attained. The proposed works provide a more efficient and orderly development on the steeply sloping land that is of high-quality architectural design which maximises the sites development potential along with providing appropriate housing stock within the locality.

2.9 Is the development standard a performance-based control?

The objectives of the development standard provide the controls to allow a performance-based solution. For the reasons outlined herein, it is demonstrated the

proposal meets the objectives of the development standard, therefore Council should consider "compliance to the standard unreasonable in the circumstances of the development".

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

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

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

Yes, Section 4.6 enables a development standard within an LEP to be varied, providing sufficient and compelling arguments based on sound planning rationale and legislation are put forward to support the variation.

1.3 Objects of Act

*(c) to promote the orderly and economic use and development of land,
(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,*

The following environmental planning grounds justify contravening the development standard.

- The location of the proposed new works will be integrated into the existing built form and site topography that slopes away to the east. When using the *Bettar v Council of City of Sydney* [2014] NSWLEC 1070 at [39]-[41]. The court expressly rejected different heights resulting from the same development standard preferring the natural ground level as this method provides for increased equity and visual consistency.
- The proposed upper floor works are moderate in nature and maintain the existing built form and character of the site. The proposed works will be in keeping with the existing character and the desired future development in the area. This design limits the impact on the local environment through the use of a conventional roof design.

- The design and location of the proposed works are located to the front and rear portion of the existing dwelling. This location limits the height noncompliance and bulk of the dwelling as viewed from the public domain and maintains the building mass and scale. This option promotes improved amenity and sustainable design capable of maintaining the objectives of the LEP, *Height of Buildings* 4.3, and is compatible with the adjacent dwellings.
- As depicted within the proposal's shadow diagrams, there is minimal impact on the private open space to the adjoining dwellings.
- This style of design limits any potential impacts that a more substantial addition would create, with this design limiting new windows to reduce impacts on views from adjoining dwellings with little impact from the public domain.
- Promoting good sustainable design and reduced costs for construction, this proposal utilizes existing structures and areas of the site. This is far more cost-effective as it uses the existing roof and deck planes to connect to the existing structure.
- The proposal provides improved private open space through improved outdoor open space areas that complement the existing deck area, providing access and safety to indoor-outdoor living.
- The proposal provides improved housing in a low-density environment. The proposed development provides for increased amenity and improved housing development in this low-density while maintaining the character of the existing dwelling.

Discussion.

The case of *Bettar v Council of City of Sydney* [2014] NSWLEC 1070 at [39]-[41]. The court expressly rejected different heights resulting from the same development standard. The Bettar approach inferred the existing ground level was taken from an extrapolated coordinate of natural ground level prior to excavation that had taken place on the site. This saw a much more uniform approach and provided for a far better level of equity for owners, and importantly, better outcomes in terms of good planning measures for the preservation of Streetscapes and consistent visual access from the public domain.

The methodology provided for in the Bettar case has been widely used by council(s) as an appropriate way for calculating building height, as it provided for a more uniform outcome of development and made far better sense in terms of building design and planning outcomes.

However, the current case in Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC1582 has also addressed the issues of determining maximum heights of buildings. Although the Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC1582, case did not apply the Bettar decision but instead said at [73] that¹

- the existing level of the site at a point **beneath** the existing building is the level of the land at that point.

and

- the ‘ground level (existing)’ within the footprint of the **existing** building is the existing excavated ground level on the site.

The result was the Court found the new building was over the maximum height control based on the above, but there was also an environmental planning ground that may justify the noncompliance under a section 4.6 variation to the standard, importantly in terms of the findings of the court in the case. The clause 4.6 submitted with the case was upheld and the development consent was subsequently granted.

There are limited explanations as to why the Bettar approach was not used in the Merman case, possibly it was not applied as the floor levels excavated in the Merman case did not use the same characteristics. This may also be further explained with the first point of the Merman conclusion noting that the case at [138] was not to be used as a precedence.

Extract from; Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC1582 [138]

“The granting of consent to the proposal does not create a planning precedent, because the characteristics of the site and the merits of the proposal are unique.”

¹ Referenced from Lexology October 10, 2021.

From [145]

(2) The appeal is upheld.

(3) Development Application No. 325/2020/1 for the demolition of all the existing structures, removal of existing vegetation, excavation to accommodate two levels of basement parking and construction of a three and four storey residential flat building comprising four apartments, a plunge pool for one apartment and associated landscaping, is approved, subject to the conditions of consent at Annexure A.

The preceding information and the following environmental planning grounds justify contravening the development standard. Furthermore, that also add the following.

- The proposal provides a more environmentally friendly dwelling.
- The proposal utilizes existing services.
- The proposal provides private open space and landscaping.
- The proposal provides onsite parking.
- The proposal provides improved housing in a low-density environment.

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

As noted above, strict compliance with the building height is unreasonable as the proposed works are of a moderate nature and have been designed to limit the environmental planning impacts of the development through the use of the existing floor areas to create the new space that vastly improves the amenity of the dwelling.

Clause 4.6 allows for strict compliance with the development standard to be varied if unreasonable or unnecessary in the circumstance of the case. *Wehbe v Pittwater Council* [2007] NSW LEC 827 expressed that there are five different methods in which a variation of the development standard may be considered unreasonable or unnecessary. Only one of the five methods is sufficient to demonstrate that adherence is unnecessary or unreasonable (Ref *Wehbe v Pittwater*).

As detailed within section 2.7 of this clause 4.6, the development utilizes the existing areas of the dwelling. This is far more cost-effective in terms of construction as it uses the existing roof and deck planes to connect to the existing structure and provides for a more environmentally effective dwelling. As increased shading is

provided to the dwelling, specifically to the eaves that protect the wall facades and glazed components of the structure.

This new rear roof area also provides for increased outdoor open space through the use of the existing deck area providing access to indoor-outdoor living with little to no impact on the surrounding environment as the existing landscaping is maintained and the new areas proposed are located away from the front setbacks providing relief from the public domains.

Furthermore, and most importantly, the proposed development provides for increased amenity and greatly improved housing development in this low-density area in keeping with the locality and the objectives of the low-density living controls.

The nature of the proposed works is of little significance to the bulk and scale of the dwelling, with the proposed works providing for the increased articulation of the existing dwelling. These works have minimal impact on the surrounding neighbours with minimal effect on view lines, access to outdoor visual volume, and shadow lines.

As detailed above, the objective of the standards is achieved throughout the development, despite not strictly achieving compliance with the height requirements. Therefore, in this circumstance, the standards are unreasonable and unnecessary with the variation to the maximum building height requirements, in our opinion, acceptable, noting that there are appropriate planning grounds as detailed above in support of the noncompliance.

CONCLUSION

2.12 Summary

The resulting development has been designed to enhance the existing residential building by improving the amenity for the residents while maintaining, where possible, the conditions set out by Warringah Local Environment Plan 2011. The proposed works included in this report are, in our opinion, reasonable in relation to the existing built works, & do not adversely impact the surrounding properties, whilst justifying the environmental planning grounds for Northern Beaches Council. We consider that when applying both the of *Bettar v Council of City of Sydney* [2014] NSWLEC 1070

Clause 4.6 Variation To Development Application 1 Phyllis Street North Curl Curl NSW

and the Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC1582 [138], the proposal will generally comply and will have minimal impact, improves the streetscape and character of the neighbourhood and request that council support the Clause 4.6 Variation of the Development Application.

ITEM 3.2	DA2022/2207 - 30 ABERNETHY STREET SEAFORTH - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE INCLUDING SWIMMING POOL
REPORTING MANAGER	Rodney Piggott
TRIM FILE REF	2023/709444
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations 3 ↓ Clause 4.6

PURPOSE

1. To refer the attached application for determination as required under adopted delegations of the Charter.
2. To refer the attached application for determination due to directions provided by the Department of Planning & Environment in relation to applications with a clause 4.6 variation to the building height standard.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **refuses** Development Consent to DA2022/2207 for demolition works and construction of a dwelling house including swimming pool on land at Lot A DP 358783, 30 Abernethy Street SEAFORTH, for the reasons for refusal set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/2207
Responsible Officer:	Jordan Davies
Land to be developed (Address):	Lot A DP 358783, 30 Abernethy Street SEAFORTH NSW 2092
Proposed Development:	Demolition works and construction of a dwelling house including swimming pool
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Adam Scott Mcdougall Jasmin Alicia Bobyk
Applicant:	Luxitecture Pty Ltd
Application Lodged:	03/01/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	22/08/2023 to 05/09/2023
Advertised:	Not Advertised
Submissions Received:	7
Clause 4.6 Variation:	4.3 Height of buildings: 29.4% 4.4 Floor space ratio: 8.25%
Recommendation:	Refusal
Estimated Cost of Works:	\$ 2,888,000.00

Executive Summary

This development application seeks consent for demolition of an existing dwelling and construction of a new dwelling house and swimming pool.

The application is referred to the DDP as seven (7) unique submission have been received and there is a departure of more than 10% from the height of buildings development standard.

The application is referred to the Development Determination Panel (DDP) due to an exceedance of

the 8.5m Height of Buildings (HOB) Development Standard under Clause 4.3 MLEP 2013. The height of the building is between 6.2m and 11m, a maximum departure of 29.4% from the development standard. The application is accompanied by a comprehensive Clause 4.6 variation request which identifies that breach of the standard is a result of the extremely steep site topography which consists of a series of rock boulders which sit within the building footprint and result in extremely street fall across the site. Despite the technical building height breach, the height and scale of the building is compatible with the adjoining buildings which consist of three storey buildings with elevated balconies with a similar maximum height.

The proposal also results in a departure of 8.25% from the Floor Space Ratio (FSR) development standard. The Manly LEP 2013 prescribes an FSR of 0.4:1 for the site and the proposal has an FSR of 0.433:1. The application is accompanied by a Clause 4.6 variation request which explains that the variation to the FSR standard arises due to the site being an 'undersized allotment' as identified within the Manly DCP. It is noted that the FSR is consistent with the FSR variations permitted within Manly DCP for undersized allotments and as such, the exceedance is acceptable.

The application was notified and received seven (7) unique submissions from the surrounding properties. Concerns raised in the objections predominantly relate to view loss (from 4 properties), privacy impacts, building bulk and scale, stormwater and non-compliance with the building form controls DCP/LEP. Each of these issues are addressed in detail throughout the report. Of note, a detailed view sharing assessment is undertaken and the proposal has been found to result in an acceptable view sharing outcome for the surrounding properties, despite the departures from the height and FSR control.

There is a residual issue with the driveway gradient as the amended plans received during the assessment had not adequately addressed Council's Engineers concerns in relation to the gradient of the driveway (due to the development being shifted eastward to resolve view sharing). This issue could conceivably be addressed via a minor design amendment (i.e raising the garage level approximately 400mm) however, this information has not been forthcoming at the time of finalising the assessment report and as such, the recommendation is refusal due to the unresolved issue of the driveway gradient which does not comply with Council's low profile design specification.

Furthermore, Council's engineer is not satisfied with the information provided from the applicant's geotechnical engineer in relation to stormwater management. As such, until this information is provided, the application is recommended for refusal.

Whilst the assessment has found that the application is an acceptable built form and retains reasonable amenity for the surrounding properties, this report concludes with a recommendation that the DDP refuse the application due to the outstanding unresolved engineering matters at the time of finalising this assessment report.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks to demolish the existing structures on the site and construct a new dwelling house and swimming pool.

Specifically, the proposal consists of:

Basement Level (RL 50.65)

- Rumpus Room which will open out to the entertaining deck and pool area.
- Storage and plant rooms
- Guest bedroom
- Bathroom

- The entertaining deck will include a breakfast bar and BBQ area.

Ground Floor (RL53.85)

- 3 bedrooms with ensuites. The master bedroom will include a walk-in-robe. The bedrooms will have access to a balcony.
- Study

First floor (RL 57.05)

- Open plan living/dining/kitchen. Kitchen will include a butlers pantry. This will open out to a rear facing balcony.
- Laundry
- Study
- Bathroom
- 2 car garage

An internal lift provides access to each level. A clerestory roof feature will house the lift overrun and provide increased solar access internally.

A new swimming pool with cabana is proposed. Stormwater management plans and landscape plans accompany this application.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Local Environmental Plan 2013 - 6.2 Earthworks
Manly Local Environmental Plan 2013 - 6.4 Stormwater management
Manly Local Environmental Plan 2013 - 6.5 Terrestrial biodiversity
Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
Manly Local Environmental Plan 2013 - 6.12 Essential services
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 - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

SITE DESCRIPTION

Property Description:	Lot A DP 358783 , 30 Abernethy Street SEAFORTH NSW 2092
Detailed Site Description:	The subject site consists of one (1) allotment located on the western side of Abernethy Street. The site is regular in shape with a frontage of 20.6m along Abernethy Street and a depth of 33.53m. The site has a surveyed area of 692.8m². The site is located within the R2 Low Density Residential Zone zone and accommodates a two storey dwelling house and swimming pool. The site has a steep topography which falls sharply from the eastern to western boundary. There is a relatively level section of land at the eastern side of the site, before the site falls at a 1 in 2 grade beneath the existing building footprint. There are a series of rock outcrops which are situated beneath the building footprint. The land has an overall fall of 12m across the site. The site is void of significant vegetation within the site, with low lying shrubs and trees in the backyard. There are some well established canopy trees on adjoining sites, including a mature gum tree to the west of the site which is 26m tall. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by detached dwelling houses and parking structures. The buildings on the western side of Abernethy street are characterised by street level access, maintaining a single storey appearance fronting the street. As viewed from the west, the buildings present a three stories due to the topography of the land and filling of the lower levels of the building footprint. Directly to the north of the site is a three storey dwelling house. Directly to the south of the site is a three dwelling house. To the eastern side of the street are two storey dwellings with garage/basement beneath.

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 **10.2017.165.1** for Alterations and additions to the existing dwelling house was approved on 15/09/2017 by Northern Beaches Council. The works consisted of a fence.
- **DA 171/09** for Alterations and Additions to a dwelling house was approved on 2/12/09 by Manly Council.

History of Subject Application

On 9 May 2023, Council wrote to the applicant requesting additional information and amendments in regards to the building height, view sharing, privacy, solar access and works within the road reserve.

On 16 August 2023, Council received a set of amended plans and additional information, including an updated Clause 4.6 variation in response to the RFI.

The application was re-notified between 22 August and 5 September due to the amended plans and additional information received.

On 27 October, Council received an amended set of plans in response to the second engineering and road asset referrals. The changes included the proposed demolition of the existing fencing within the road reserve and relocation of the proposed letterbox outside of the road reserve (as requested by Road Asset Team), raising of the garage level by 100mm to respond to Council's Engineers comments about the driveway profile.

The changes to the proposal are considered to be minor and do not give rise to additional impact, as such, the application was not required to be formally re-notified in accordance with the Northern Beaches Community Consultation Plan.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters can be addressed via a condition of consent. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to building height, road reserve, shadow diagrams and Clause 4.6. This information was provided and considered as part of the assessment. <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 can be addressed via a condition of consent. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter can be addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent

Section 4.15 Matters for Consideration	Comments
	authority to consider the provisions of the Building Code of Australia (BCA). This matter can be addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would be contrary to 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 Kristan Dowdle, dated 17 March 2022) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report can be included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 22/08/2023 to 05/09/2023 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 7 submission/s from:

Name:	Address:
Mr Richard Van Brugge	32 Abernethy Street SEAFORTH NSW 2092
Mark Horsley	34 Abernethy Street SEAFORTH NSW 2092
Mr Nigel Shaun Christopher Heap	35 Abernethy Street SEAFORTH NSW 2092
Corona Projects Pty Ltd	PO Box 1749 BONDI JUNCTION NSW 1355
Mr Ian Trevor McKnight Mrs Gayle Rosalee McKnight	28 Abernethy Street SEAFORTH NSW 2092
Mr Jingwei Xu The Planning Hub	23 Abernethy Street SEAFORTH NSW 2092
Ms Susan May Kluss Mr Sam Liuzzo	25 Abernethy Street SEAFORTH NSW 2092

One (1) submission was received in support, with six (6) submissions raising concerns with the proposal.

The following issues were raised in the submissions:

- Visual Privacy for two adjoining properties
- View sharing and view impacts for surrounding properties
- Visual Bulk and Scale of the building
- Overshadowing from development
- Stormwater impacts for downstream properties
- Geotechnical Risks and construction impacts due to vibration/excavation
- Non-compliance with side setbacks
- Gable roof form is not compatible with the streetscape
- Exceedance of development standards

The above issues are addressed as follows:

- *Visual Privacy for two adjoining properties*

Comment: Visual privacy is dealt with under the discussion against Clause 3.4.2 MDCP and the proposal is found to be reasonable with regards to visual privacy.

- *View sharing and view impacts for surrounding properties*

Comment: View sharing is dealt with under the discussion against Clause 3.4.3 Maintenance of Views MDCP and the proposal is found to be reasonable with regards to view sharing.

- *Visual Bulk and Scale of the building*

Comment: Visual bulk and scale is dealt with under the assessment of the building height

variation, within the Clause 4.6 Variation assessment later in this report. The proposal is found to be compatible with the bulk and scale of the surrounding buildings

- *Overshadowing from development*

Comment: Overshadowing and solar access is dealt with under the discussion against Clause 3.4.1 Sunlight Access and Overshadowing MDCP and the proposal is found to result in a compliant amount of solar access to be maintained for the surrounding properties.

- *Stormwater impacts for downstream properties*

Comment: The application has been considered by Council's development engineers with regard to stormwater drainage. The applicant was denied a downstream easement to dispose of stormwater and as such, has provided a concept stormwater plan which includes on-site detention and a level spreader. Whilst the design is generally acceptable, insufficient information has been provided in relation to address landslide risk in relation to stormwater discharge.

- *Geotechnical Risks and construction impacts due to vibration/excavation*

Comment: The application is accompanied by a geotechnical report which assesses the risks associated with the proposal. The geotechnical report concludes that subject to the recommendations within the report being followed, the proposal can be carried out within without geotechnical risk to the adjoining properties. Compliance with the geotechnical report will be included as a consent condition.

Council's engineers are not satisfied with the information in relation to landslip arising due to stormwater discharge, as insufficient information has been provided by the geotechnical engineer. Please see comments Council's engineering comments later in this report.

If consent were to be granted, conditions should be included for dilapidation reports to be carried out for the adjoining properties.

- *Non-compliance with side setbacks*

Comment: The side setbacks are discussed within the assessment report under Clause 4.1.4 Setbacks. The proposed garage has a nil setback to the southern boundary. However, this is an existing situation and the new garage replaces the existing garage, albeit in a more western position. The garage adjoins other parking structures/inclinators and as such will not result in unreasonable amenity impacts to the adjoining sites.

- *Gable roof form is not compatible with the streetscape*

Comment: The building maintains a low scale/single storey appearance to the streetscape and there are a variety of flat, curved and pitched roof forms on the surrounding buildings and street generally. Compatibility does not mean 'sameness' and as such, as the proposal presents an acceptable scale to the streetscape the proposed pitched roof is acceptable in the streetscape. The view sharing outcomes of the pitched roof are considered within the view sharing assessment later in this report.

- *Exceedance of development standards*

Comment: The exceedance to the FSR and building height standards are addressed in detail

within the Clause 4.6 assessment later in this report. The applicant's written request sets out sufficient environmental planning grounds to warrant departure from the development standards and a high level of amenity is maintained for the surrounding sites. As such, the exceedence does not warrant refusal of the application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	Supported - Subject to Conditions The proposal is supported with regard to landscape issues. 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): • 3.3.1 Landscaping Design • 3.3.2 Preservation of Trees or Bushland Vegetation • 4.1.5 Open Space and Landscaping, including 4.1.5.2 (c) Minimum Tree Plantings Landscape Referral notes that significant encroachment into the road reserve is proposed, and review by Council's Road Reserve Referral team is required. The Landscape Referral has only assessed the proposed works within the property boundary. It is also noted that previous approval for the existing encroachment was granted by Council. An Arboricultural Impact Assessment (AIA) and Landscape Plans are included in the application and will be assessed as part of the Landscape Referral. No trees are located within the site boundary and as such all neighbouring trees must be retained and protected. The AIA supports the retention of all neighbouring trees with an acceptable impact, and Landscape Referral supports the tree protection recommendations outlined in the AIA, subject to the imposed conditions. Tree 7 is proposed to be transplanted and as such a transplanting methodology plan shall be prepared. The two proposed <i>Cupaniopsis anacardioides</i> are considered an environmental threat by Council, and as such they shall be substituted with a suitable alternative. Furthermore, the two substituted species shall be located a minimum of 3 metres from the dwelling and wholly within the site boundary, subject to the imposed conditions. All natural rock outcrops outside the approved construction footprint shall be retained and protected during works. The proposed planting over the OSD tank is supported; however, Council's minimum soil depth requirements must be achieved.
NECC (Bushland and Biodiversity)	Supported subject to conditions The proposal has been assessed against the following applicable biodiversity-related provisions:

Internal Referral Body	Comments
	• SEPP (Resilience and Hazards) - Coastal Environment Area • Manly LEP Clause 6.5 - Terrestrial Biodiversity The submitted arboricultural impact assessment confirms that no prescribed native trees are proposed for removal to facilitate the development. Additionally, the bush fire assessment report states that "No tree clearing will be required for bushfire protection purposes". Conditions recommended by the Landscape referrals team will ensure new tree plantings are consistent with locally native vegetation communities.
NECC (Development Engineering)	Not Supported on current plans The proposal is for demolition works and construction of a new dwelling. The submitted stormwater plan proposal disposal to a level spreader via an OSD system which is acceptable subject to conditions. Refusal of easement letters have been provided. The proposal involves significant works in the road reserve which requires comments and concurrence from Council's Road Asset team prior to final engineering assessment. Additional Information Provided 16/8/2023 <u>Driveway Access</u> Insufficient information has been provided with regard to the proposed access driveway. The proposed gradients do not comply with current standards and the transition extends within the parking space. Any transitions proposed within the garage must be outside the parking space. The parking area must not exceed a 5% grade. It is recommended that Council's standard Maximum Low profile be adopted. This may require amendments to the proposed garage level. The Applicant shall provide a long-section at both edges of the proposed access driveway to the proposed garage and demonstrate compliance with AS2890.1. <u>Stormwater</u> It is noted that the rear neighbors have raised concerns regarding stormwater management. As the site falls to the rear and refusal of easement letters have been provided the discharge via level spreader is acceptable. However the design of the level spreader shall be in accordance with Appendix 4 of Council's Water Management for Development Policy. Total discharge including bypass flows and controlled flows through the level spreader must not exceed the 20% AEP state of nature storm event. The geotechnical report has indicated that an absorption system is not viable for the site. Please provide concurrence from the geotechnical engineering regarding the method of stormwater disposal and the location of the level spreader. Additionally the amended plans have not addressed the Road Assets teams requirements for the removal of the existing encroachment on

Internal Referral Body	Comments
	the road reserve. Amended plans are to address the requirements of the Road Asset team as well as address the engineering concerns as above. Additional Information Provided 27/10/2023 <u>Driveway Access</u> The amended driveway profile has been reviewed. While the transition within the garage has been removed the proposed gradients do not comply. To comply with the Maximum Low profile the garage level will need to be raised by approximately 400mm. The link to the profile is as follows: https://files-preprod-d9.northernbeaches.nsw.gov.au/nbc-prod-files/documents/general-information/driveway-and-vehicle-crossings/standard-vehicle-crossing-profile-maximum-low-jul22.pdf?1698376820. <u>Stormwater</u> A screen shot of the geotechnical engineer's email providing concurrence for the location of the level spreader has been provided which is insufficient. Please provide correspondence from the geotechnical engineering regarding the method of stormwater disposal, the rate of discharge and the location of the level spreader confirming that it will not cause any landslip issues.
Road Reserve	Supported subject to conditions It is noted there was an agreement made in 2017 between the Northern Beaches Council and the property owner of 30 Abernethy St Seaforth, which allowed property owner to the installation of a timber fence in reference to DA0165/2017. The proposed plan in DA2022/2207 to construct a masonry structure on the public road reserve, does not comply with Section 157 of the Road Act 1993. The Proposed masonry wall is considered a permanent structure and provisions of the Roads Act requires that the structure that are subject of a lease comprises a fence or a temporary structure of a kind that can easily be demolished or removed. Additionally, it gives the impression of taking over public land for private use, which is not acceptable. Given the redevelopment of the property involves demolition of the existing dwelling and creation of new private open space between the front of the new dwelling and the property boundary, it is recommended the encroachments on the road reserve be removed, including the private terraced areas, gardens and fencing. Consideration would be given to an alternate landscaping proposal that avoids the privatisation of the public road reserve and provides a wider verge area for pedestrian access. The application is therefore unsupported. Development Engineers may condition the driveway, retaining wall

Internal Referral Body	Comments
	and pedestrian entry works as part of a S138 civil works application in the public road reserve. 06/10/2023 - Amended Comments It is noted the works initially proposed on the Council verge have been removed from the development Application. Such a proposal would not be approved in the current environment given the community's "opposition" at the privatisation of public land for private benefit. Given the new development application and the demolition of the existing dwelling, the historical privatisation of the public road reserve and the associated fencing encroachments on the public road reserve should be removed and the development application amended to illustrate the return and restoration of the public road reserve to full community access. Any proposed fencing must be removed from the road reserve and relocated on the property boundary. Given the location of the existing fence, we cannot support the application. 26/10/2023 - final comments The amended plans including Sheet DA-A009-Rev 3 dated 16.10.23 with notations indicating relocation of letterbox and removal of timber fence on road reserve. Further details to be submitted to Council in a Minor Encroachment Application prior to undertaking any works on the public road reserve alternatively, Development Engineers may condition the driveway, retaining wall and pedestrian entry works as part of a S138 civil works application in the public road reserve.

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.

External Referral Body	Comments
Aboriginal Heritage Office	Reference is made to the proposed development at the above area and Aboriginal heritage. No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.

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. 1355618S dated 14 December 2022).

If consent is granted, a condition to be included requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).

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

Comment:

The proposal was referred to Ausgrid who raised no objections.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 1 Coastal Wetlands and littoral rainforest area

2.7 Development on certain land within coastal wetlands and littoral rainforests area

- 1) The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:
 - a) the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,
 - b) the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,
 - c) the carrying out of any of the following:
 - i) earthworks (including the depositing of material on land),
 - ii) constructing a levee,
 - iii) draining the land,
 - iv) environmental protection works,
 - d) any other development

Comment: The land is not within coastal wetlands or littoral rainforest area.

2.8 Development on land in proximity to coastal wetlands or littoral rainforest

- 1) Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:
 - a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or
 - b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

Comment: The land is not within coastal wetlands or littoral rainforest proximity area.

Division 2 Coastal Vulnerability Area

2.9 Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and
- b) the proposed development:
 - i) is not likely to alter coastal processes to the detriment of the natural environment or
 - ii) other land, and
 - iii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and
- c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.

Comment: The land is not within the coastal vulnerability area.

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 application has been considered in relation to the matters listed (a) to (g) and the proposal will not have an adverse impact due to the proximity from the site to the waterway, which is separated by another dwelling. There will be no direct impacts upon the natural coastal processes or biodiversity associated with the coastal environment area. The proposal includes appropriate stormwater and sediment and erosion control measures.

- 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 impacts to matters listed (a) to (g) have been avoided and minimised, with conditions recommended where appropriate.

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 proposal has been designed to have an appearance and scale that is generally consistent with the two adjoining buildings and as such, will not have a detrimental impact on the coastal area. Council is satisfied that the proposal is designed to avoid and minimise impacts to the matters listed (a) i) to v).

Division 5 General

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

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

Comment: The proposal does not increase the risk of coastal hazards having regard to the distance to the foreshore and elevation from the foreshore area.

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 not coastal management program applicable to this site.

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

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	6.2m to 11m	29.4%	No
Floor Space Ratio	FSR: 0.4:1 (277.12m ²)	FSR: 0.433:1 (300m ²)	8.25%	No

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	No
6.5 Terrestrial biodiversity	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	No

Detailed Assessment

4.6 Exceptions to development standards

Clause 4.3 Building Height

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	6.2m to 11m
Percentage variation to requirement:	29.4%

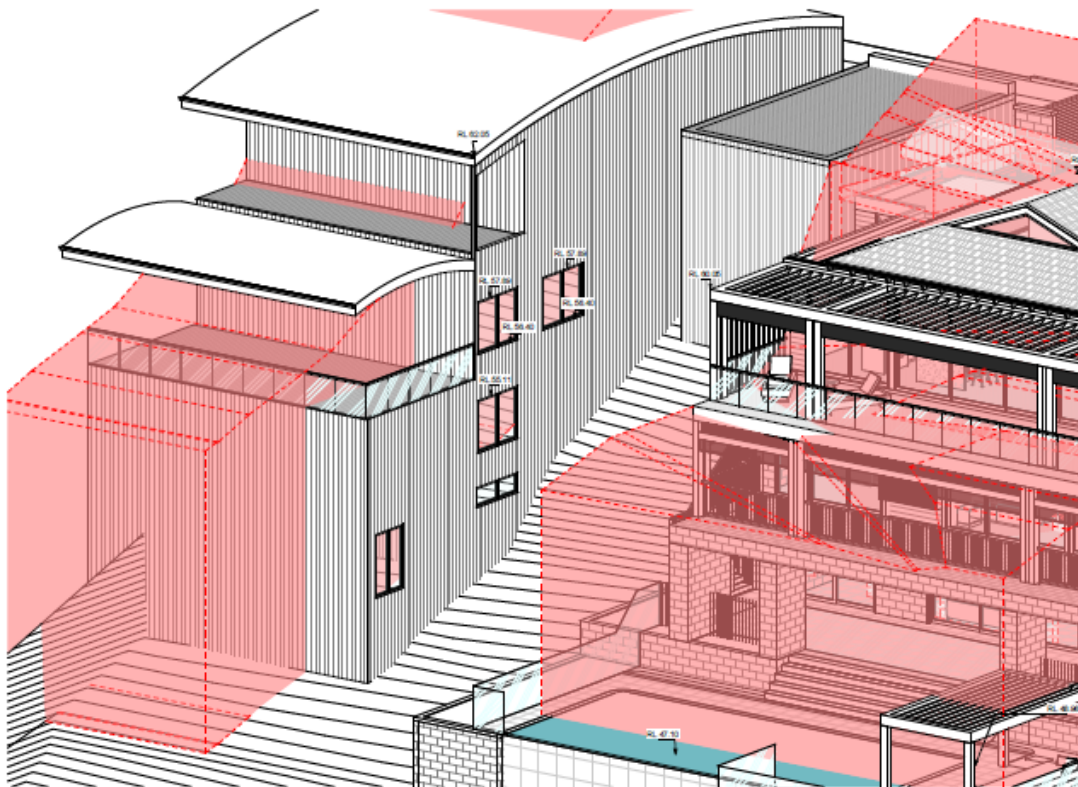


Figure 1 - Extract from plans showing 8.5m height blanket.

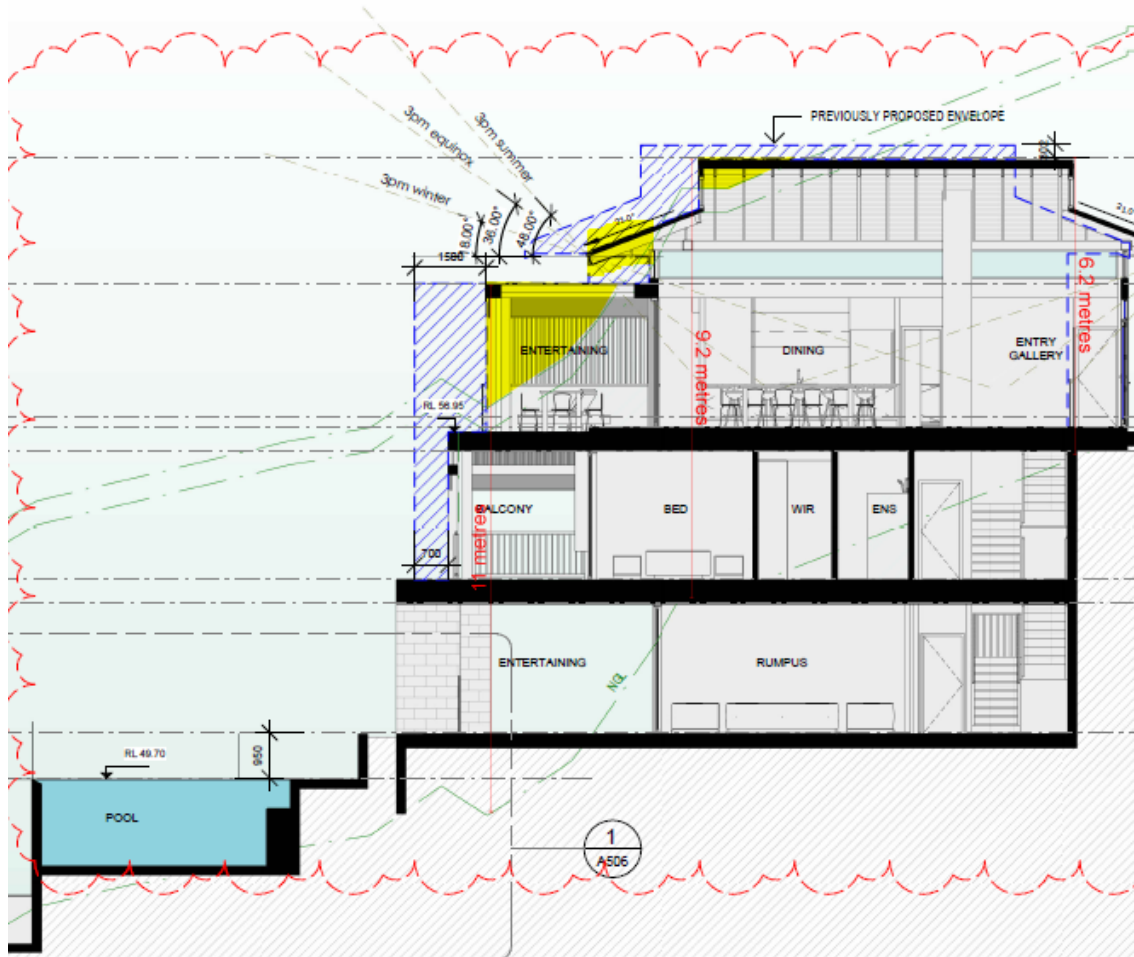


Figure 2 - Extract from plans showing a section plan and 8.5m height plane. Yellow areas represent areas of encroachment.

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 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 steep topography makes strict compliance with the building height standard challenging in this instance*
- *The topography gradient averages 43.5% across the site with vertical rock shelves present in the buildable area. Images below demonstrates the rocky and steep topography*



Figure 1 - Extract from Clause 4.6 titled 'Figure 9: Steep rock shelves on site'.



Figure 2 - Extract from Clause 4.6 titled 'Figure 10: Rock Shelves'

- *The proposed dwelling is consistent with the scale and number of storeys with regard to development within the immediate vicinity. Dwellings in the area are multistorey which reflects the steep topography. Drawing A201, southern elevation, provides an outline of the adjoining dwelling at No. 36. The outline is highlighted in yellow and demonstrates the reasonable scale in terms of height of the proposal.*

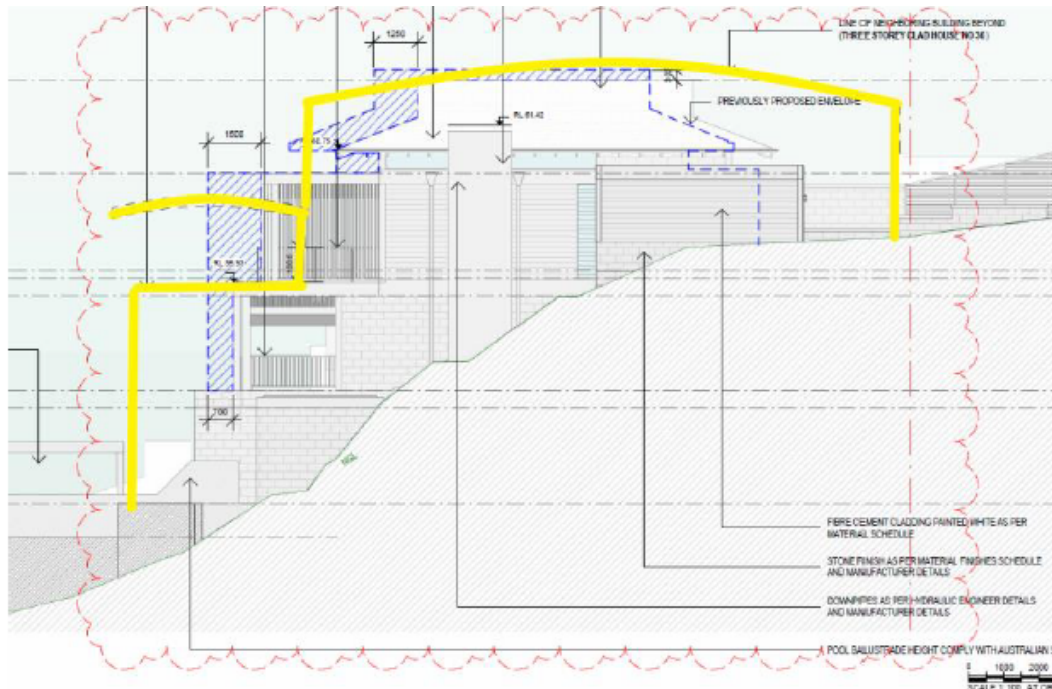


Figure 10: Southern Elevation showing the height compatibility

Figure 3 - Extract taken from Clause 4.6

- The ability of the dwelling to step down the slope is negated by the steepness however amendments have been made to push the first floor back towards the front boundary. The dwelling will better reflect the topography of the site in that regard which generally encourages development to step down sloping sites.
- The proposal will reduce the height of the dwelling as it relates to the streetscape and will contribute positively to its character above that of the existing dwelling. Streetscape analysis is provided below which shows the existing unusual built form to be demolished to be replaced with a more traditional cohesive design. The height of the dwelling as it presents to the streetscape will be reduced.

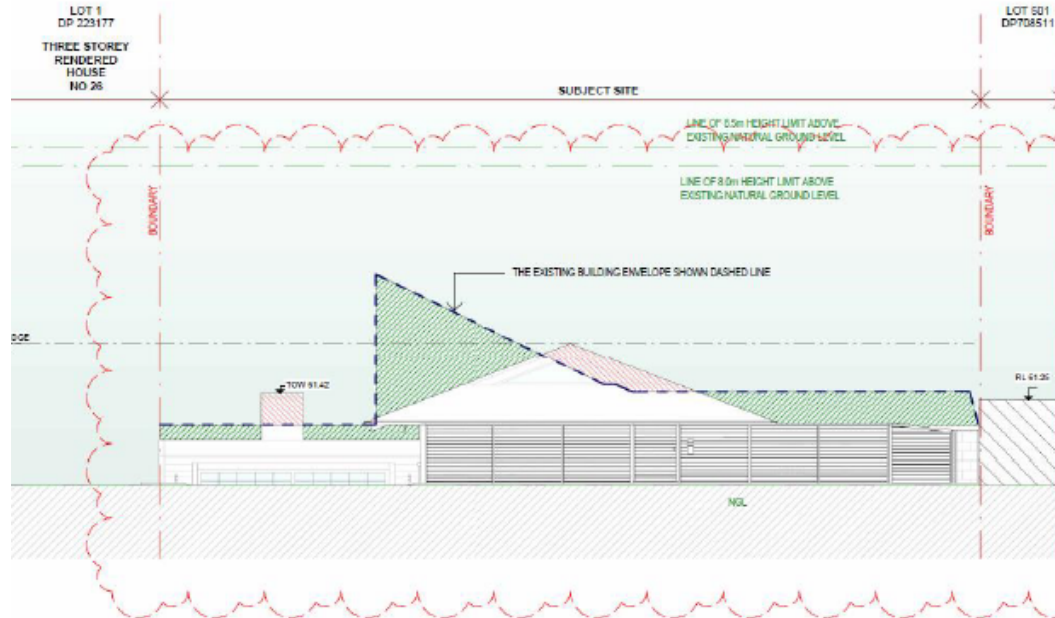


Figure 11: Existing and Proposed streetscape view

Figure 4 - Extract taken from applicant's Clause 4.6

- The undersize lot size, existing canopy trees and existing overshadowing of the subject site make providing adequate internal solar access difficult. The design choice for a clerestory window achieves adequate solar access into the dwelling. It has been centrally located to minimise any adverse impacts on neighbours.
- In this regard, I consider the proposal to be of a skilful design which responds appropriately and effectively to the above constraints by appropriately distributing floor space, building mass and building height across the site in a manner which provides for appropriate streetscape and residential amenity outcomes including a view sharing scenario.
- Such outcome is achieved whilst realising the reasonable development potential of the land.
- The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically: The proposal promotes the orderly and economic use and development of land (1.3(c)). The development represents good design (1.3(g)). The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(h)).
- It is noted that in Initial Action, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:
87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

There are sufficient environmental planning grounds to justify contravening the development standard.

Council's Comment on Environmental Planning Grounds

The environmental planning grounds as set out within the Clause 4.6 request are agreed with. In particular, the steepness of the site and the series of rock boulders toward the center of the site creates a steep drop off that makes compliance difficult to achieve, particularly when there is a balance to be achieved with the siting of the dwelling with regards to view sharing and achievement of high quality solar access having regard to the position of the dwellings on the adjoining sites.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the MLEP 2013 are:

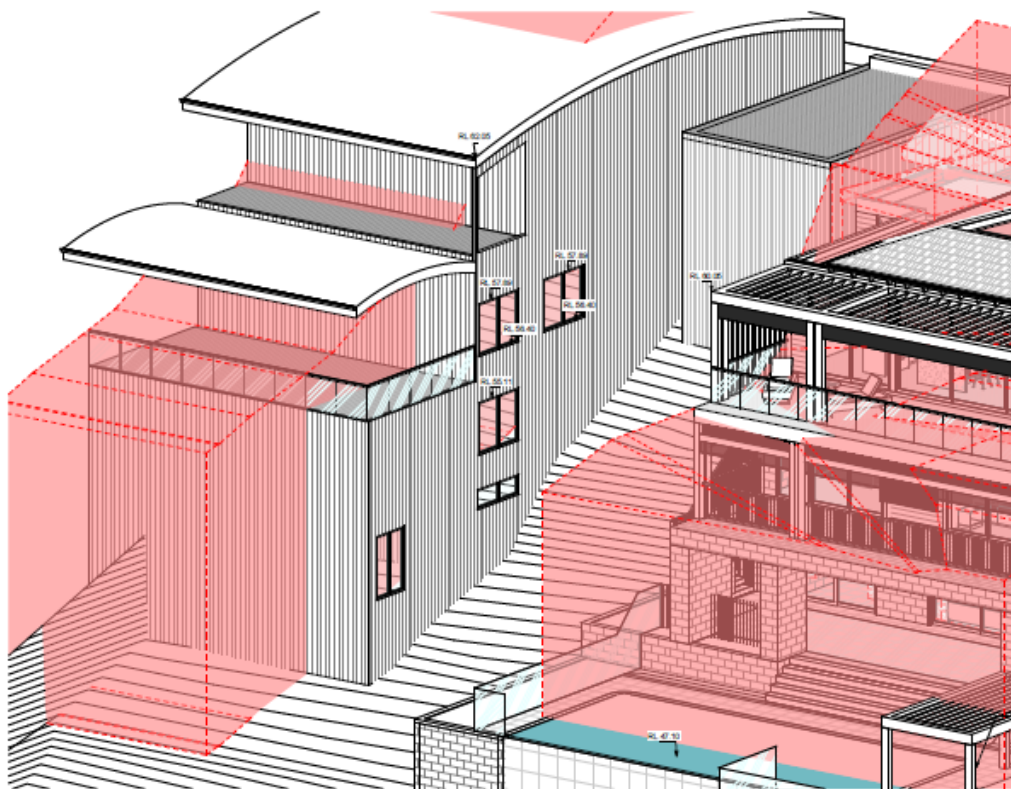
(1) The objectives of this clause are as follows:

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 roof form has been stepped appropriately to respond to the slope of the land, with the largest portion of encroachment a result of the pergola over the upper level entertaining area/deck. The two adjoining dwellings are also characterised by multi storey dwellings with upper level decks which are covered by a pergola or shade structure. The proposal will sit

comfortably in the context of the two surrounding buildings and will be consistent with the prevailing building heights of the adjoining buildings as established by the existing dwellings on the western side of Abernethy Road. The building at 26 Abernethy has a roof pergola roof form at the western extent of the building at RL59.24 and the building at 36 Abernethy has a upper level pergola to RL 62.05. The proposed pergola has a height of 60.05 and therefore is generally consistent with the heights of the two adjoining buildings. The centralised gable roof form represents a minor breach of the 8.5m height limit at is at RL 62.68, however a point encroachment that does not render the development of a bulk/scale out of character for the locality.

The topographic landscape is very steep, with a significant drop off from a rock shelf central to the site. This is what causes the numerical breach of the building height. However, the building has stepped back in a reasonable way to suit the topographic conditions and maintains consistent win bulk and scale with the adjoining buildings. It is noted that the pergola is a more lightweight structure in breach of the height limit and therefore, limits the apparent bulk of the building. The roof form is of a height that is generally consistent with the surrounding buildings, with the central roof form at RL 62.68 and the adjoining building at RL62.05.



It is also noted that the proposed upper level balcony is setback behind the alignment of the two adjoining buildings, therefore reducing the visual prominence of the building when viewed from the adjoining sites. This also promotes view sharing.

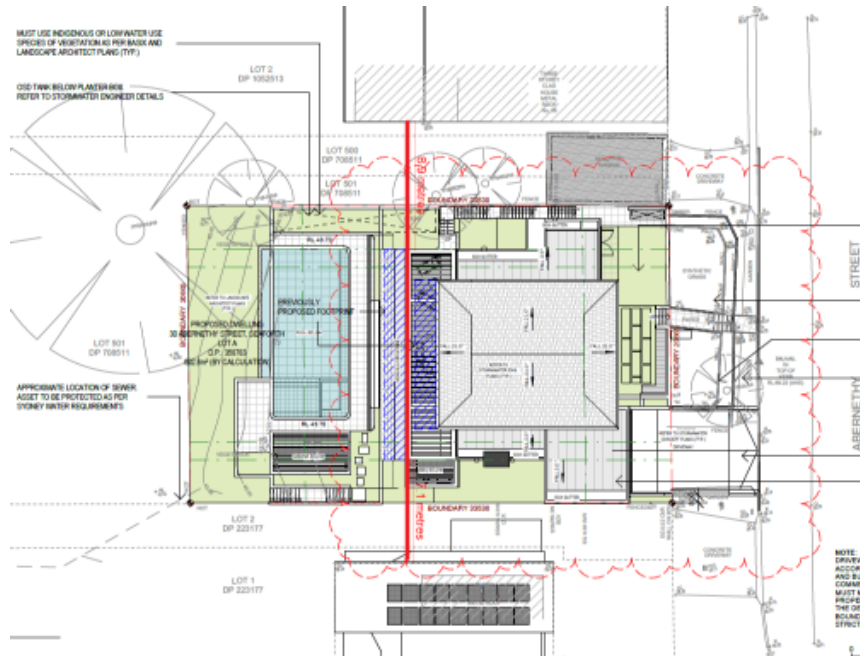


Figure XX - Red line represents alignment of breaching top floor balcony, sitting behind the alignment of the adjoining two buildings.

b) to control the bulk and scale of buildings,

Comment: Whilst the objective of the 8.5m building height control aims to 'control the bulk and scale of buildings', strict compliance is difficult to achieve due to the overall slope of the site and significant drop off due to the rock outcrop. The bulk and scale of the building is controlled in other ways, through appropriate setbacks, varied roof forms and an appropriate spatial relationship to the adjoining two buildings. The building will sit comfortably in the context of the two adjoining buildings and wider locality.

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 is found to maintain reasonable view sharing for the adjoining sites and the public domain and this is discussed in detail later within this report as part of a view sharing assessment.

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: As discussed later in this report under Clause 3.5.1 Solar Access MDCP, the proposal allows for a high level of solar access to be maintained for the adjoining property at 26 Abernethy Street.

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 site is not in an environmental protection zone of recreation zone. However, the building will sit below the predominant tree canopy of the surrounding locality and sit comfortably in the context of the adjoining buildings on the escarpment when viewed from the waterway.

Zone objectives

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

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

Comment: The proposal provides for a new dwelling, within a landscape setting, to result in a low density residential environment consistent with the size and scale of those surrounding.

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

Comment: Not relevant to this proposal.

Conclusion:

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

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

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

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

Clause 4.4 Floor Space Ratio

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.4:1 (277.12m ²)
Proposed:	0.433:1 (300m ²)
Percentage variation to requirement:	8.25%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.1 - Minimum subdivision lot size OR Clause 4.3 – Height of Buildings OR Clause 4.4 - Floor space ratio OR 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 4.1 - Minimum subdivision lot size OR Clause 4.3 – Height of Buildings OR Clause 4.4 - Floor space ratio OR 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 / has not demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

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

(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 FSR is reasonable within its context of the locality whilst the proposed built form is considered to be reasonable when compared to existing development within the streetscape. The subject site is consistent with the undersized lot provisions (cl: 4.4.3.1) with the Manly DCP which states that Council may consider exceptions to the maximum FSR under LEP clause 4.6 when both the relevant LEP objectives and the provisions of this DCP are satisfied. In this regard, we note that the minimum lot size applicable is 750m² resulting in a maximum GFA of 300m². The proposed GFA is compliant with the 300m² control and this report has demonstrated consistency with the FSR and zone objectives within the LEP.*
- *The works have been designed to maintain a predominately 2 storey form to the street to ensure consistency with established development. Significant side setbacks to the ground and first floor provides relief from any visual impact with the proposed wall heights also being compliant. Total open space and landscaping are also compliant with the DCP control. Compliance with the numerical controls within the LEP and DCP is reflective of the considered design approach to limit any potential bulk and scale and visual impact concerns despite the FSR variation.*
- *The development does not raise any unreasonable amenity impacts with regard to overshadowing, privacy and view loss. As outlined in the statement of environmental effects view loss assessment, views will be maintained from the immediately adjoining properties. The developments across the road to the rear will be unaffected as they sit well above the subject site and will still access views over the proposed dwelling.*
- *We note that Council has applied the FSR development standard flexibility in this locality and have approved variations provided that the undersized lot provisions within the DCP can be met.*

Council's Comment on Environmental Planning Grounds

The above environmental planning grounds are agreed to be sufficient, in particular, the 'undersized' nature of the allotment as identified within the Manly DCP. The proposal meets the 'undersized allotment' requirement of the Manly DCP, not exceeding 300m² of GFA. The other ground identified in relation to the maintenance of reasonable amenity for the surrounding properties is agreed with and discussed within this report. It is agreed that the building is compatible with the bulk of the surrounding buildings.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.4 – 'Floor space ratio' of the MLEP 2013 are:

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

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

Comment: The building presents as a single storey building to the streetscape, well below the building height at the street frontage. The visual bulk of the building as viewed from the surrounding properties will be compatible with the adjoining buildings.

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

Comment: The proposal maintains a good level of spatial separation between the adjoining sites, with the highest part of the building providing 3m side setbacks that can be landscaped to enhance the landscape setting. There is a suitably sized area of landscaping within the front and rear setback. The rock outcrops within the centre of the site do not have any particular landscape or townscape significance due to their location beneath the existing dwelling undercroft and that are not visually prominent when viewed from surrounding sites.

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

Comment: The existing character is made up of two and three storey dwellings in a landscape setting. The proposal is consistent with the existing character and will site comfortably in the context of the surrounding buildings.

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

Comment: The proposal maintains a high level of solar access to the surrounding buildings and privacy is maintained through screening and spatial separation. View sharing is discussed in detail later within this report and the proposal is found to maintain sharing of views. It is important to note that the portions of the building which generate any new view impacts (in relation to water views) are elements that do not constitute 'floor space' within the building, these being a pitched roof form and an pergola. As such, the view sharing principles established within Tenacity v Warringah Shire Council addressed.

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

Comment: Not applicable to this development.

Zone objectives

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

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

Comment: The proposal provides for a new dwelling, within a landscape setting, to result in a low density residential environment consistent with the size and scale of those surrounding.

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

Comment: Not relevant to this proposal.

Conclusion:

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

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

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

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

6.2 Earthworks

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

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

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

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

the locality of the development

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

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

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

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

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

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

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

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

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

(f) the likelihood of disturbing relics

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

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

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

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

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

6.4 Stormwater management

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

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

Comment: Insufficient information has been provided with regard to the design of the level spreader in relation to geotechnical risks that may arise due to the discharge of stormwater. For this reason, the

application is recommended for refusal. See Council's engineers comments.

(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 are not satisfied stormwater has been resolved as insufficient information has been submitted in relation to stormwater management and geotechnical risk. As such, the application is recommended for refusal.

6.5 Terrestrial biodiversity

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

- (a) protecting native fauna and flora, and*
- (b) protecting the ecological processes necessary for their continued existence, and*
- (c) encouraging the conservation and recovery of native fauna and flora and their habitats.*

In this regard, before determining a development application for development on land to which this clause applies, the consent authority must consider:

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

Comment:

The application has been referred to Council's Biodiversity team who are satisfied that impacts have been mitigated or avoided to biodiversity. The proposal does not involve the removal of any significant trees.

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

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

Comment:

The application has been referred to Council's Biodiversity team who are satisfied that impacts have

been mitigated or avoided to biodiversity. The proposal does not involve the removal of any significant trees.

6.9 Foreshore scenic protection area

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

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

Comment: The proposed dwelling is compatible in size and scale of the two adjoining buildings and wider surrounding area. As such, the proposal will not have a detrimental impact of the scenic qualities of the foreshore area.

The proposal will have a high quality appearance and will be compatible with the surrounds. No trees of high value are removed as part of the development. There will be no impact on water based coastal activities.

6.12 Essential services

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

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

Comment:

The application has not satisfied pre-condition (e) of Clause 6.12, as there is a residual issue with the driveway gradient as the amended plans received during the assessment have not adequately addressed Council's Engineers concerns in relation to the gradient of the driveway (due to the development being shifted eastward to resolve view sharing). This issue could conceivably be addressed via a minor design amendment (i.e raising the garage level approximately 400mm) however, this information has not been forthcoming at the time of finalising the assessment report and as such, the recommendation is refusal due to the unresolved issue of the driveway gradient which does not comply with Council's low profile design specification.

See Council's engineers comments in the referral response.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 692.8m ²	R
4.1.1.1 Residential Density and Dwelling Size	Den:
4.1.2.1 Wall Height	N: 8m (bas S: 8m (bas
4.1.2.2 Number of Storeys	
4.1.2.3 Roof Height	f Paraj Pitch: m:
4.1.4.1 Street Front Setbacks	Preva (Prev *Exi
4.1.4.2 Side Setbacks and Secondary Street Frontages	North fa North Soutl South Fa South (base V
4.1.4.4 Rear Setbacks	
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS1/2/3/4	Open spa Open space abo
4.1.5.2 Landscaped Area	Landscaped : 3
4.1.5.3 Private Open Space	18sc
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of 1
4.1.9 Swimming Pools, Spas and Water Features	1m hei 1m curtilage/1.5
Schedule 3 Parking and Access	Dw

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.7 Stormwater Management	No	No
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

A concern has been raised by No. 26 Abernethy Street regarding overshadowing and solar access. The application is accompanied by shadow diagrams and 'view from sun' diagrams to demonstrate the solar access outcomes for 26 Abernethy Street. An assessment against the controls is carried out below:

3.4.1.1 Overshadowing Adjoining Open Space

The control states in relation to sunlight to private open space of adjacent properties:

a) New development (including alterations and additions) must not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm at the winter solstice (21 June)

Comment: The view from sun diagrams show at 9am there will be some overshadowing of the western facing deck and backyard of 26 Abernethy (these two areas are considered to form part of the private open space). By 10am, these areas will not be impacted by the proposal and receive sunlight throughout the day. Therefore, the property will retain 5 hours solar access to the private open space areas being the western deck and backyard/pool area.

A concern has been raised by 26 Abernethy about a courtyard along the side northern passage of the building. This will be impacted between 9am and 1pm, however is considered a secondary private open space and is located in a vulnerable position, due south of the proposal. Given 5 hours is received to the backyard and western facing terrace, the proposal complies with the DCP.

3.4.1.2 Maintaining Solar Access into Living Rooms of Adjacent Properties

The control states in relation to sunlight to living rooms of adjacent properties:

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

Comment: The view from sun diagrams show that the upper level north facing living room windows of 26 Abernethy will receive full sunlight from 11am onwards providing 4 hours solar access, compliant with the control. Sunlight to the living room windows is partially impacted between 9am and 11am, which is a result of the chimney. However, as this chimney only services a gas fireplace, a condition should be included if consent to be granted to reduce the height of the chimney by a further 0.5m to afford further solar access to 26 Abernethy.

3.4.1.3 Overshadowing Solar Collector Systems

The control requires a minimum of 6 hours solar access be retained to solar collectors on neighbouring properties.

Comment: The view from sun diagrams demonstrate that there will be no impact to the solar panels on the roof of 26 Abernethy Street.

3.4.1.4 Overshadowing Clothes Drying Areas

The control requires a minimum of 6 hours solar access be retained to a suitable clothes drying area.

Comment: Ample opportunity will remain available for clothes a clothes drying area capable of receiving 6 hours solar access.

3.4.2 Privacy and Security

Privacy has been dealt with via full height privacy screening on the upper level balcony that forms part of the principal private open space for the dwelling. The privacy screening will minimise looking between the adjoining two properties, who also have elevated balconies to capture views.

The balcony off the ground floor plan (mid-level) services only bedrooms and as such, will be a less utilised space that impacts upon privacy. There is approximately 9m of separation to the dwelling to the north and approximately 7m separation to the south.

The side elevations have limited window openings, with only a laundry window facing north and a narrow living room window facing south, which is reasonable to allow some ambient light into the living room corner. The size of the south facing living room window is not considered to give rise to unreasonable privacy impacts.

3.4.3 Maintenance of Views

Merit consideration:

The development is considered against the Objectives of the Control:

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

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

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

During the notification of the application there were four (4) properties who raised concerns about view impacts and view sharing. These being 23, 25, 35 and 36 Abernethy Street and are identified on the below map (red markers).

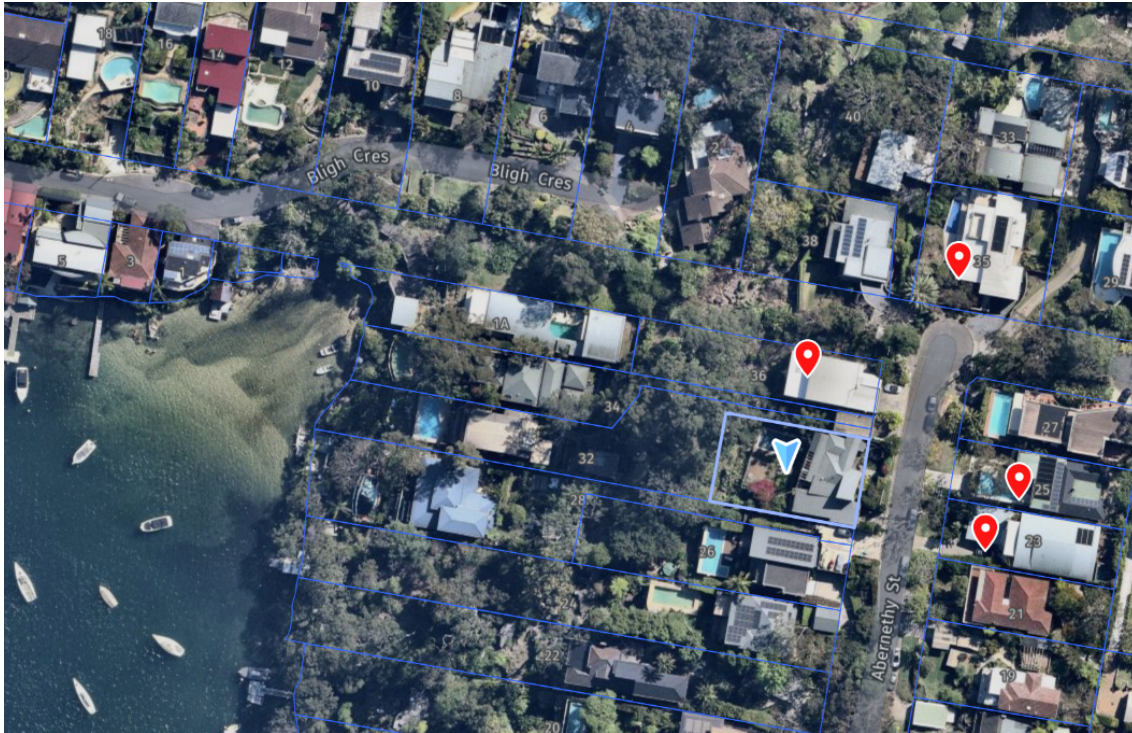


Figure 1 - Red markers identify properties who have raised view impact concerns.

Four (4) height poles were erected and surveyed (survey certificate provided) in the following locations:

- 1) North-western corner of the upper level pergola;
- 2) South-western corner of the upper level pergola;
- 3) Western point of the pitched roof form;
- 4) Eastern point of the pitched roof form.

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 (Tenacity)* are applied to the proposal.

A view sharing assessment is undertaken within Attachment 1 to this report and is provided as a separate document, given the length of the assessment, Each property is considered individually against the Tenacity Planning Principle within the view sharing assessment.

Having regard to the assessment contained within Attachment 1, it is concluded that the proposed development is consistent with the View Sharing Planning Principle Established in *Tenacity* and relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979.

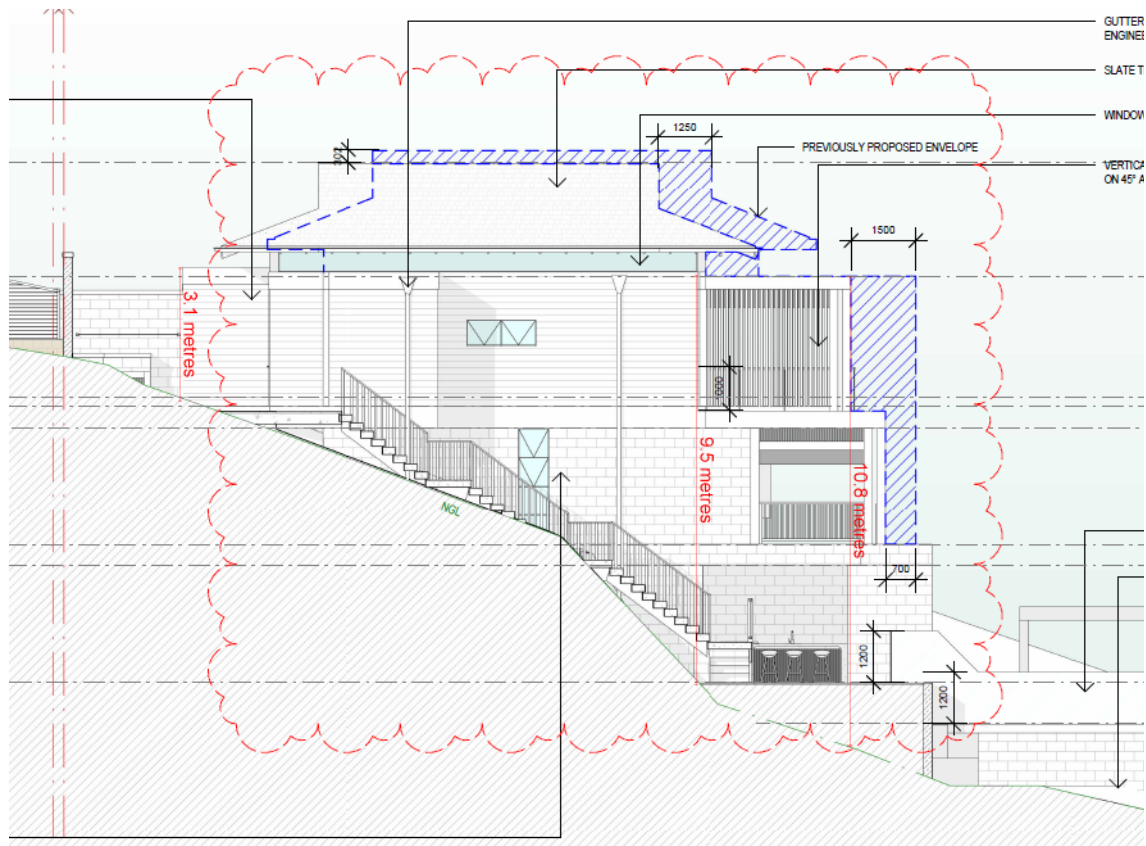
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

Description of non-compliance

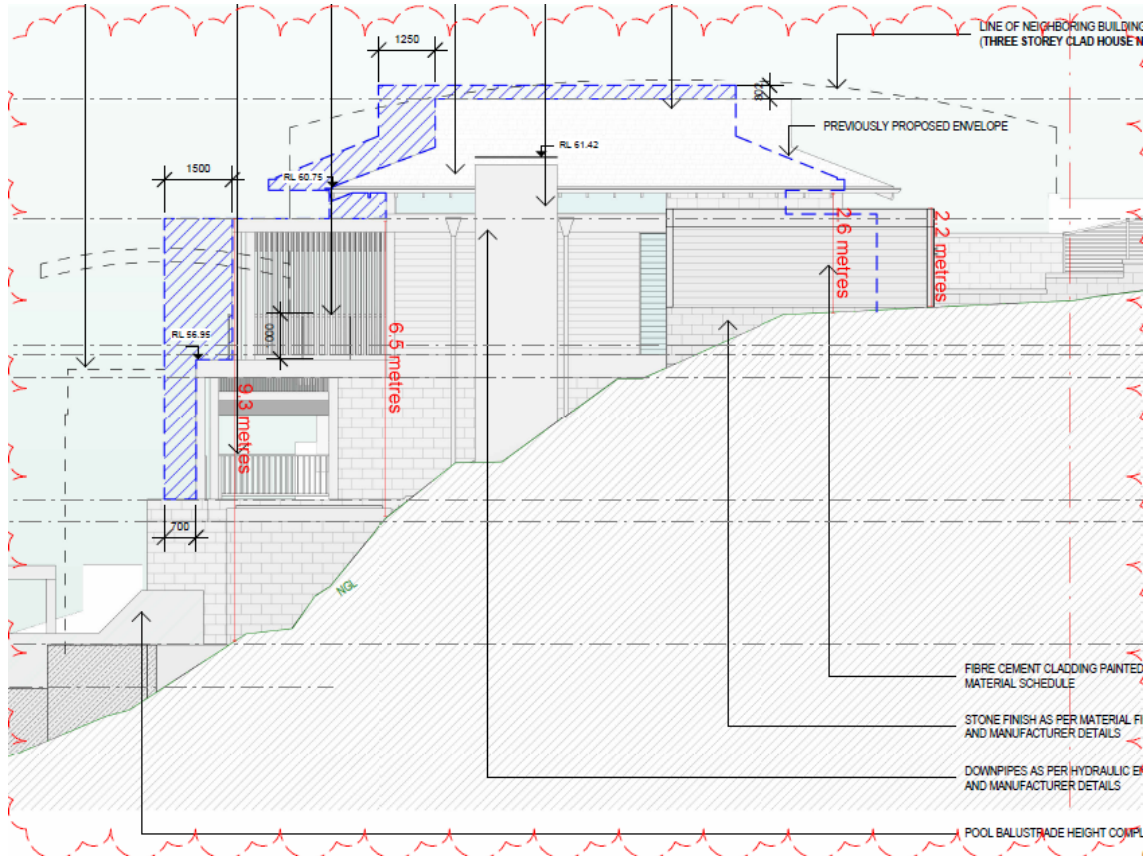
The DCP requires a maximum wall height of 8m when the site slope of 1:4+ gradient. The site, in

particular in the area of non-compliance, has a slope of 1:2 and in some locations, a near vertical drop due to a rock outcrop.

The northern wall is between 3.1m and 9.5m, with the pergola up to 10.8m, see below:



The southern wall is between 2.1m and 6.5m, with the pergola up to 9.3m, see below:



Merit consideration

There are no underlying objectives of this control under which to consider the merits of this variation. This control instead relies on the objectives for the Height of Buildings at clause 4.3 in the Manly LEP 2013. The proposal has been assessed against these objectives under clause 4.6, above in this report. In summary, the non-compliance to the wall height is a direct result of the extremely steep topography of the land and the proposal is found to meet the objectives of the building height standard (as discussed in Clause 4.6 assessment earlier in this report). Therefore, the DCP variation is supported in this particular circumstance.

4.1.3 Floor Space Ratio (FSR)

See discussion under Clause 4.4 and Clause 4.6 MLEP 2013.

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

Description of non-compliance

The DCP requires side setbacks to be 1/3 of the height of the wall on the side elevations. The setback requirements across the site are varied due to the sloping nature of the site.

The northern elevation has a wall height of between 3.1m to 10.8m, requiring a side setback of between 1.1m to 3.16m façade and 3.6m to the balcony.

The proposed setback to the northern elevation is between 0.9m and 3m, including the balcony at 3m, a variation of up to 600mm.

The southern elevation has a wall height of between 2.1m to 9.3m, requiring a side setback of between 1.2m to 2.16m to the façade, and 3.1m to the balcony. The proposed garage requires a 0.7m side setback.

The proposed setback to the northern elevation is 3m, compliant with the control. The proposed setback to the balcony is 3m, non-compliant by 100mm. The garage is proposed to have a nil setback, non-compliant with the control.

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 provided front setback and side setbacks are consistent with the street character. The minor breaches to the side setbacks will not have a visible street appearance or influence the character of the street.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposal is well designed to retain privacy between sites, allow for view sharing and maintain solar access as detailed elsewhere within this assessment report. The minor breaches to the side setbacks do not detract from the street character.

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

Comment:

The development has been sited flexibly to respond to the site constraints and retain reasonable amenity for and from the development.

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 1.1m to 3m side setbacks provided allow for a meaningful landscape buffer alongside of the development to plant vegetation.

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

Comment:

Not applicable to this site.

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

4.1.9 Swimming Pools, Spas and Water Features

The control for swimming pools requires that:

4.1.9.1 Height above ground

a) Swimming pools and spas must be built on or in the ground and not elevated more than 1m above natural ground level. Consideration of any exception to exceed the height above ground must demonstrate that any swimming pools and/or spa and their curtilage and/or concourse more than 1m above natural ground level:

i) would not detract from the amenity or character of the neighbourhood; and

ii) is a minimum distance from any side boundary equivalent to the height of the swimming pools and/or spa and their curtilage and/or concourse at any point above existing ground level.

Comment: The swimming pool at the rear of the site protrudes above the ground level up to 2.7m due to the sloping nature of the site. The swimming pool itself has a setback of 5.7m to the rear (west) boundary, a 5.9m setback to the south side boundary and a 3m setback to the northern side boundary. The swimming pool provides a 'wet edge' along the western side to break up the height of the pool presenting to the west.

The pool is considered to meet i) and ii) above as follows:

- i) The surrounding sites are dwellings, pools, decks and structures on a steeply sloping which results in elements protruding above ground level, however sitting within a landscape setting with landscape setbacks. The proposal responds to this by providing generous landscape setbacks to the pool to mitigate bulk and scale. There is a substantial setback to the western dwelling to the rear which means the pool will not be visually prominent for the downslope properties;
- ii) The pool provides at least a 2.7m setback to the boundaries and therefore meets the requirement.

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 \$28,880 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,888,000.

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

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

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

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 and Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

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

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

This development application seeks consent for demolition of an existing dwelling and construction of a new dwelling house and swimming pool.

The application is referred to the DDP as seven (7) unique submission have been received and there is a departure of more than 10% from the height of buildings development standard.

The departure from the building height development standard is supported due to the extremely steep topography of the site, compatibility with the surrounding buildings and acceptable view sharing outcome for the surrounding sites. The departure from the FSR standard is due to the site being an 'undersized allotment' as identified within the DCP. As such, there are sufficient environmental planning grounds to support the breaches to the development standard in this circumstance.

The concerns raised in the objections have been addressed within the assessment report (including a detailed view sharing assessment).

The critical assessment issues relating to views, privacy, building height/scale have been resolved to the satisfaction of Council's planner and are detailed within this assessment report.

However, the residual issue with the driveway gradient due to the amended plans has not been adequately addressed to the satisfaction of Council's Engineers. This issue could conceivably be addressed via a minor design amendment (i.e raising the garage level approximately 400mm) however, this information has not been forthcoming at the time of finalising the assessment report and as such, the recommendation is refusal due to the unresolved issue of the driveway gradient which does not comply with Council's low profile design specification.

Furthermore, Council's engineer is not satisfied with the information provided from the applicant's geotechnical engineer in relation to stormwater management. As such, until this information is provided, the application is recommended for refusal.

Whilst the assessment has found that the application is acceptable from a built form and retains reasonable amenity for the surrounding properties, this report concludes with a recommendation that the DDP refuse the application due to the outstanding unresolved engineering matters at the time of finalising this assessment report.

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

RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2022/2207 for the Demolition works and construction of a dwelling house including swimming pool on land at Lot A DP 358783,30 Abernethy Street, SEAFORTH, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 6.4 Stormwater Management of the Manly Local Environmental Plan 2013. Specifically, insufficient information

has been provided with regard to the design of the level spreader in relation to geotechnical risks that may arise due to the discharge of stormwater.

2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 6.12 Essential Services of the Manly Local Environmental Plan 2013. Specifically, the application has not satisfied pre-condition (e) of Clause 6.12, as the driveway gradient does not comply with Council's Maximum Low profile driveway gradient requirement.

Attachment 1 – Manly DCP Clause 3.4.3 Maintenance of View

Merit consideration:

The development is considered against the Objectives of the Control:

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

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

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

During the notification of the application there were four (4) properties who raised concerns about view impacts and view sharing. These being 23, 25, 35 and 36 Abernethy Street and are identified on the below map (red markers).

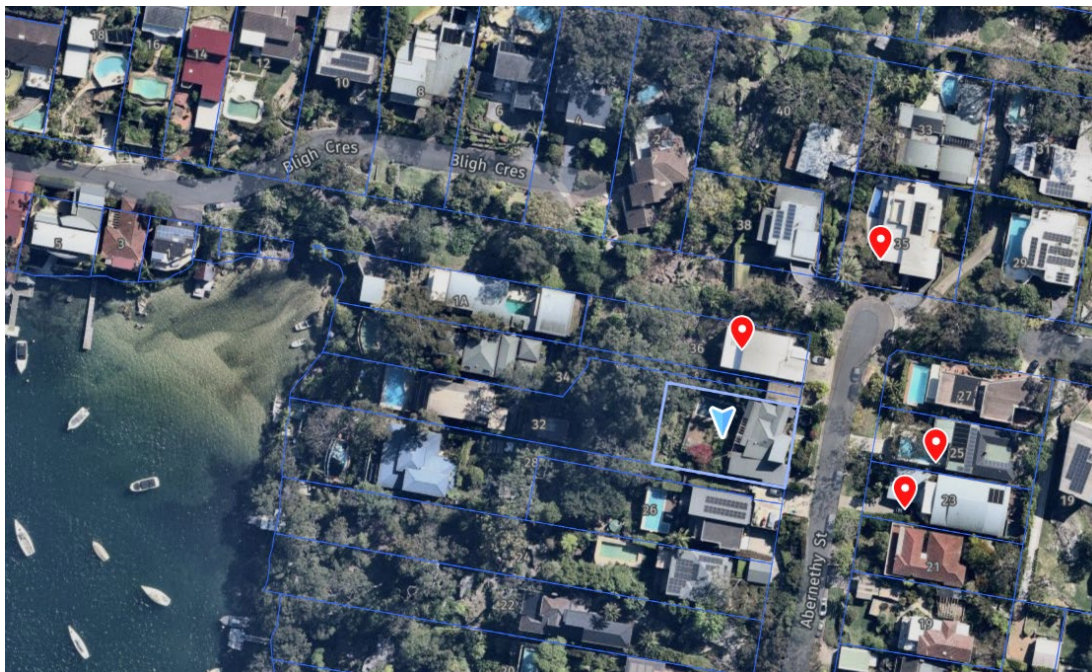


Figure 1 - Red markers identify properties who have raised view impact concerns.

Four (4) height poles were erected and surveyed (survey certificate provided) in the following locations:

- 1) North-western corner of the upper level pergola;
- 2) South-western corner of the upper level pergola;
- 3) Western point of the pitched roof form;
- 4) Eastern point of the pitched roof form.

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 (Tenacity)* are applied to the proposal.

It is important to note that the location of the height poles **represent the original plans as submitted**. The amended plans reduce the height of the central roof pitch by 302mm and move the roof 1.25m closer to the front (eastern) boundary. The upper-level pergola is also setback 1.5m and the lower-level pergola setback 0.7m.

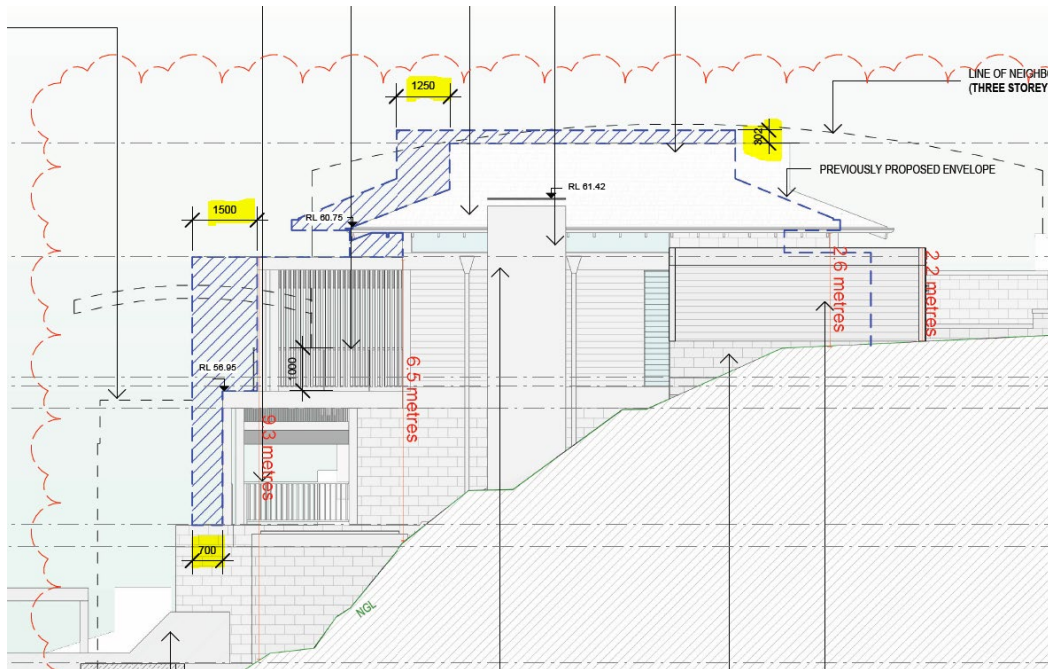


Figure 2 – Southern elevation showing the revised plans with increased setback to the western boundary and reduced ridge height of the roof form.

Each property is considered individually against the Tenacity Planning Principle below.

23 Abernethy Street

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:

The views to be impacted are water views of Middle Harbour, with the 'land water interface' retained over the top of the building. The views are locally significant, however are not considered 'iconic' in the meaning of the Tenacity planning principle.



Figure 3 - View from upper level terrace, looking west, standing position.



Figure 4 - View from inside living/kitchen area, upper level, standing position looking west.



Figure 5 - View from lower level bedroom on southern side of building, standing position looking west.



Figure 5 - View from lower-level bedroom on northern side of building, standing position looking west.

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 views are obtained from two ground level bedrooms and the upper floor kitchen/living/dining areas, along with the elevated terrace adjoining these areas on the western side of the building. Views are obtained from both a standing and sitting position. The views are obtained across the front boundary of the site.

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:

There are minor impacts to filtered views through existing vegetation on the lower ground floor. There is some minor impact of filtered views from the upper floor. However, it is important to note that the existing triangular portion of roof on the subject site will be demolished and replaced with a lower height pitched roof and therefore, any view impacted because of the development will be offset but the view gained due to the removal of the existing building. The view gained will be a more 'whole view' and therefore on balance, the proposal is an improvement over the existing situation in relation to view sharing. Overall, the proposal is considered to have a negligible or even neutral outcome with regards to view impacts, having regard to the triangular roof form to be removed.

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 FSR breach is discussed earlier within this report. However, the 8% exceedance FSR is not considered to generate any of the additional view impacts as impacting portions of the development are open pergolas and the pitched roof form, which do not contribute to the FSR of the building. The FSR of the building has been skillfully distributed across the site, including maintaining a single level appearance at the street frontage and using the excavated lower levels to provide for FSR to minimise view impacts.

The height breach is due to the extremely steep topography of the site and sharp fall of the land due to the rock outcrops central to the site. The height of the building has been minimised at the front of the site (single storey only) which allows increased levels of view sharing, as opposed to seeking a first floor closer to the street which could be achieved within the 8.5m height limit which would likely increase the level of view obstruction, particularly for the lower floor rooms. By keeping the house lower at the front of the site, this spreads the building bulk further to the west and therefore, results in the height encroachment due to the site topography. It is noted that the height of the encroaching pergola is consistent with the adjoining buildings (as discussed within the Clause 4.6 assessment) and this is a direct result of the site topography and design that maintains a single storey appearance at the site frontage. The encroaching pergola sits behind the alignment of the two adjoining buildings and is setback further from the western (rear boundary) as to minimise view impacts.

The pitched roof form, although having a minor building height encroachment in the centre, allows for the maintenance of views either side and is a better outcome when compared to the existing building on the site with the triangular roof to be demolished. On balance, there is a neutral outcome in terms of view impact due to the existing building to be removed.

Although there is a numerical non-compliance to building height, this is a direct result of the extreme site topography and desire to maintain a single storey street appearance and aim to achieve view sharing for the site itself. It is noted that the majority of the building is kept below the height limit (particularly at the front) and this enhances view sharing. Pushing the building further towards the street (east) for the sake of numerical non-compliance will further compromise view sharing for the subject site itself, and this is not in the spirit of view sharing particularly in the context where the vast majority of high-quality views for the surrounding properties are maintained and the impact is minor.

Overall, the proposal strikes a well-balanced outcome in relation to view sharing and is considered to be a skilful design.

25 Abernethy Street

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:

The views to be impacted are water views of Middle Harbour from the ground level and the upper level. A very minor portion of the 'land water interface' is impacted from the ground floor, however, is largely retained over the top and either side of the building. The amended plans include an increased upper level setback of 1.25m to the roof form and therefore additional view will be retained when compared to the erected height poles. The views are locally significant, however are not considered 'iconic' in the meaning of the Tenacity planning principle.



Figure 6 - View from upper floor balcony (adjoins living), standing position looking west.



Figure 7 - View from upper floor living room, standing position looking west.



Figure 8 - View from lower floor bedroom, standing position looking west.



Figure 9 - View from lower level pool area, standing position looking west.

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 views are obtained from the upper level terrace/private open space (Figure 6), upper-level living room (Figure 7), ground level bedroom (Figure 8) and ground level pool area (level 9). The views are available over the front boundary of the site from a sitting and standing position.

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:

The views from the upper level are largely retained, with a minor impact to a filtered portion of views as a result of the pitched roof form. It is noted that the existing triangular portion of roof will be demolished and as such, an equivalent portion of filtered water views will be gained, including an increased portion of the land/water interface from the ground level and pool area.

On balance of the views impacted and the views to be gained, the impact is considered to be a minor.

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 pitched roof form, although having a minor encroachment in the centre, allows for the maintenance of views either side and is a better outcome when compared to the existing building on the site with the triangular roof to be demolished. On balance, there is a neutral outcome in terms of view impact due to the existing building to be removed.

Although there is a numerical non-compliance, this is a direct result of the extreme site topography and desire to maintain a single storey street appearance. It is noted that the majority of the building is kept below the height limit (particularly at the front) and this enhances view sharing. Pushing the building further towards the street (east) for the sake of numerical non-compliance will further compromise view sharing for the subject site itself, and this is not in the spirit of view sharing particularly in the context where the vast majority of high-quality views for the surrounding properties are maintained and the impact is minor.

35 Abernethy Street

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:

The view to be impacted is a view to Middle Harbour with a portion of land-water interface and some moored boats in Middle Harbor. The view is considered to be a partial view which is impacted by building in the foreground and trees to varying degrees.



Figure 10 - View from upper floor balcony adjoining bedroom, standing position looking south-west.



Figure 11 - View from upper floor bedroom, standing position looking south-west.



Figure 12 - View from lower level lounge room, standing position looking west.

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 view to be impacted is from an upper-level bedroom. The view is technically over the 'front' boundary of the site; however, the site is largely orientated towards the western (side) boundary to capture the high-quality whole views of middle harbour from the living room (Figure 12). The views are enjoyed from a sitting and standing position in the bedroom.

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:

In consideration of the views available from the whole property, the overall view impact is minor. Of note, from the bedroom the view to the south-west of Middle Harbour is impacted, however, the view directly west will be retained in full and is the higher quality view (Figure 11). Also having regard to the high-quality view that is maintained in full from the living room looking west (Figure 12) the overall impact of the development upon the totality of views currently enjoyed from the property is considered to be minor.

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 FSR breach is discussed earlier within this report. However, the 8% exceedance FSR is not considered to generate any of the additional view impacts as impacting portions of the development are open pergolas and the pitched roof form, which do not contribute to the FSR of the building. The FSR of the building has been skilfully distributed across the site, including maintaining a single level appearance at the street frontage and using the excavated lower levels to provide for FSR to minimise view impacts.

The proposal has a point encroachment of the western portion of the central roof form, with this central roof form having an impact upon the view towards middle harbour. It is considered that even if the pitched roof form was brought into full compliance with the 8.5m height limit (by pushing it eastward) there would still be an impacted to approximately half the view to the harbour. It is considered redesigning the roof form to achieve numerical compliance, for the sake of preserving half of a secondary view corridor, is not reasonable in the circumstances where there will remain a high-quality view looking west from the bedroom. In the spirit of 'view sharing', pushing the development further eastward will diminish view corridors for the development and for this reason, the proposal is skilfully designed on balance. Furthermore, the pitched roof form remains an important architectural feature for the applicant's design of the building (with the gable allowing eastern/western sunlight) and as such, to further diminish this feature to preserve a secondary view corridor from a bedroom is unwarranted.

Overall, the proposal strikes a well-balanced outcome in relation to view sharing and is considered to be a skilful design.

36 Abernethy Street

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:

Figure 13 and 14 of the view sharing photographs show the original position of the proposed upper and mid-level terrace (which is represented by the height pole) and amended position of the upper level terrace which has been pushed back 1.5m and the middle terrace setback 0.7m (represented by the green line – marked up by applicant).

As per the amended proposal (green line), the view impacted is a portion of middle harbour water views and views towards the CBD, North Sydney and Kirribilli Skyline. The view is impacted to varying degrees depending on where one stands within the building or on the balcony.

The city skyline views (including the harbour bridge and Centre Point tower) will be retained in full from the balcony when standing to the west of the privacy screen (Figure 18).

When standing in the living room and kitchen, the partial views of the Sydney City CBD skyline, including Centre Point Tower and the Harbour Bridge, will be impacted from within the living room and kitchen. However, high quality water views will still be retained over the side boundary. Whilst the view of Centre Point Tower and the Harbour Bridge through the south facing window are somewhat available, they are considered 'partial views' which are obtained through existing vegetation, across a side boundary and through the balcony of 26 Abernethy. As such, they are partial views that are highly vulnerable to an impact.



Figure 13 - View from ground floor living room, standing position looking south.



Figure 14 – Zoomed in view from ground floor living room, standing position looking south. Two circles highlight centre point tower (left) and harbour bridge (right).



Figure 15 –View from ground floor living room, standing position looking south-west.



Figure 16 – View from ground floor kitchen, standing position looking south-west.



Figure 17 – View from ground floor balcony, standing position looking south-west.

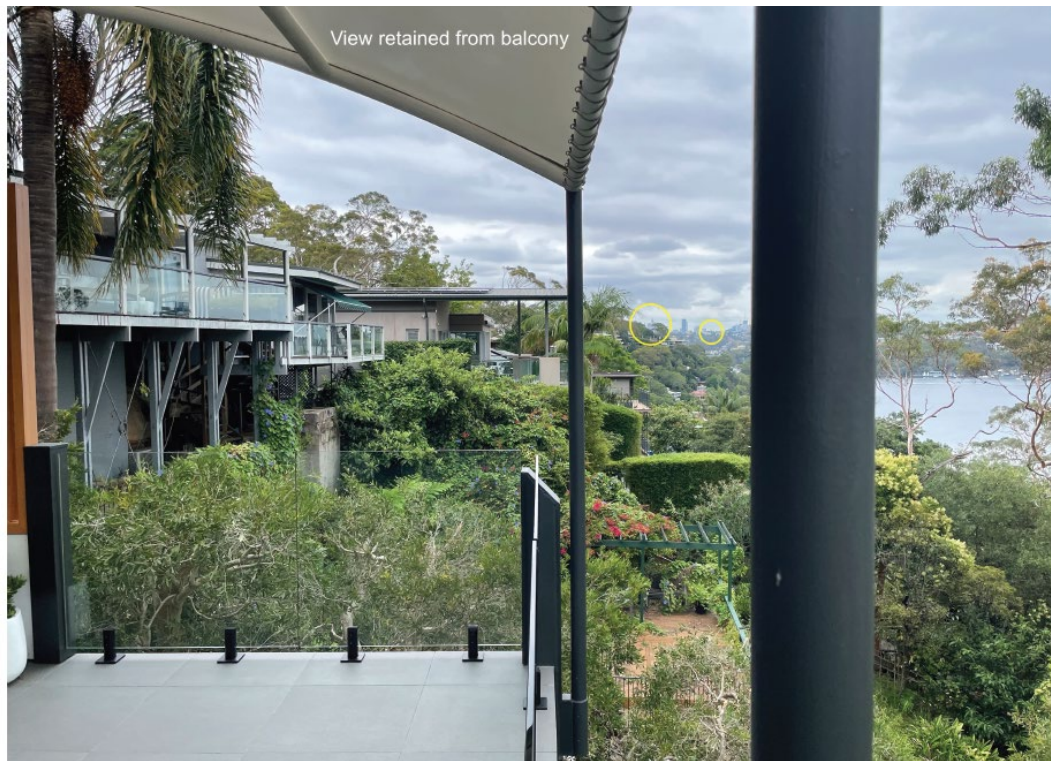


Figure 18 – View from ground floor balcony, standing position looking south-west. Image taken from applicant's Clause 4.6 written request.



Figure 19 – View from upper floor bedroom, standing position looking south-west.

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 views that will be impacted is from a seated and standing position, directly across the side boundary of the site. The views are available from the living room, kitchen, dining room and balcony adjoining these spaces. Views are also available from the upper-level bedroom. As mentioned in the planning principle, retaining side boundary views are often unrealistic. In this circumstance, the proposal impacts a portion of the side boundary view, however, still retains high quality water views over the side boundary. The side boundary view from the balcony of the CBD (including the Harbour Bridge and Centre Point Tower) are retained in full.

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:

In relation to the water view of Middle Harbour, as a result of the amended proposal the view impact is minor given the proportion of views that will be retained over the western (rear) boundary and also a large portion of water views retained from the south facing living room window. Views from the upper-level bedroom will largely be retained.

In relation to the view impact of the CBD skyline, Kirribilli Skyline and North Sydney Skyline, the impact is different depending on which part of the dwelling you stand in.

Standing on the balcony, there is no impact of the CBD skyline, Kirribilli Skyline and North Sydney Skyline, which includes full retention of the view of Centre Point Tower and the Harbour Bridge. From the south facing living room window (also visible from the kitchen) the view of the Harbour Bridge and Centre Point tower will be impacted.

The 'iconic' view of the Harbour Bridge, CBD and Centre Point Tower will be retained from the balcony, whilst high quality views of Middle Harbour will be retained from the living room, balcony, dining room, kitchen and upper floor bedroom over the rear and side boundary. Whilst it is recognised the iconic view of the Harbour Bridge and Centre Point Tower will be lost from inside the house, on balance of high-quality views retained from elsewhere in the house (and the retention of the iconic city views from the balcony), the overall impact is considered minor or at worst, moderate.

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:

It is the western (rear) setback to the building which is the determining factor within regard to view retention of the CBD Skyline, Centre Point Tower and Harbour Bridge view. The DCP requires a minimum 8m rear setback. The proposed development has a rear setback of 15.2m to the upper-level terrace/balcony and 14.4m setback to the mid-level terrace/balcony. When looking at the alignment of the adjoining two buildings, the proposal is setback behind the predominant alignment of the two nearest buildings, as shown in Figure 20 below. In relation to 'view sharing', by pushing back the proposed dwelling further, this restricts views being obtained from the balcony of the subject site. The

Planning Principle is a principle of 'view sharing', not 'view retention'. Given that the 'iconic' view of the Harbour Bridge, CBD and Centre Point Tower will be retained across a side boundary from the balcony of 36 Abernethy Street and high quality views of middle harbour will be obtained from multiple rooms over the rear and side boundary of the site, this assessment finds that view sharing is achieved.

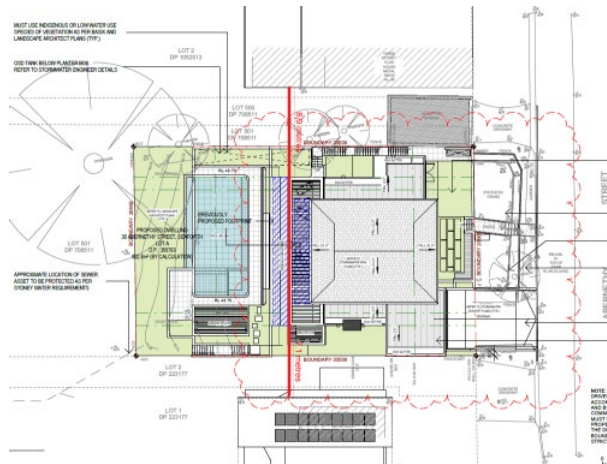


Figure 20 – Extract of plans showing the alignment of the building relative to the two adjoining buildings.

In regard to the building height and FSR, the balcony does not contribute to the FSR breach. The building has been suitably stepped with the topography of the site and the height breach is a result of the extremely steep topography of the site. The height of the proposal is not dissimilar to the height of the surrounding buildings as discussed within the Clause 4.6 and the scale of this building sits comfortably between the two adjoining buildings. It is the position of the terrace in relation to the rear boundary which is the determining factor for the view corridor over the side boundary and as mentioned above, the upper-level balcony is setback behind the alignment of the two adjoining buildings and to push it back further to retain highly vulnerable side boundary views is not considered to be 'view sharing'.

As such, the proposal is skilfully designed and responds to the planning control in a satisfactory way.

Conclusion

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

- PROPERTY BOUNDARY LINE
--- VIEW CORRIDORS FROM ADJOINING SITES
--- VIEWS FROM SUBJECT SITE
--- PREVAILING WINDS
--- LANDSCAPED AREA
--- HARD SURFACE AREA

NOTES

1. THIS IS NOT A BOUNDARY SURVEY. IMPROVEMENTS SHOWN HEREON IN RELATION TO BOUNDARIES ARE DIAGRAMATIC ONLY.
2. FULL DETAILS OF SEWER AND OTHER SERVICES SHOULD BE OBTAINED FROM THE RELEVANT AUTHORITIES.
3. CONTOURS ARE APPROXIMATE ONLY, PREFERENCE TO BE GIVEN TO SPOT HEIGHTS.
4. MAJOR TREES SHOWN ONLY.
5. DIMENSIONS AND AREA ARE SUBJECT TO SURVEY.
6. THIS PLAN HAS BEEN PREPARED FOR THE SOLE PURPOSE OF LODGING A DEVELOPMENT APPLICATION WITH THE LOCAL COUNCIL. THIS PLAN IS NOT TO BE USED FOR ANY OTHER PURPOSE.

1 SITE ANALYSIS
1 : 200

Notes

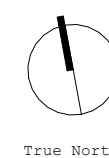
- 1) Do not scale from drawing, use marked dimensions and levels. To be read in conjunction with all consultants' documentation. Luxitecture. is to be immediately notified of any discrepancies.
- 2) Contractor to verify all dimensions, coordinate services and components prior to commencement of site work or off-site fabrication and installation.
- 3) All construction must be built to minimum requirement set outs by the Building Code of Australia and relevant Australian Standards. Luxitecture. is to be notified immediately of any discrepancies to the above, and confirmation sought.
- 4) Copyright on this drawing and design retained by Luxitecture.

Issue	Description	Date
1	DA ISSUE	13.12.22

www.luxitecture.com.au
anthony@luxitecture.com.au
LUXITECTURE

Drawn: JF

Checked: AM



True North

Project
**2129
SEAFORTH**
Client
ADAM MCDOUGALL
Address
**30 ABERNETHY STREET
SEAFORTH**

Drawing Title

SITE ANALYSIS PLAN

FOR DEVELOPMENT APPLICATION

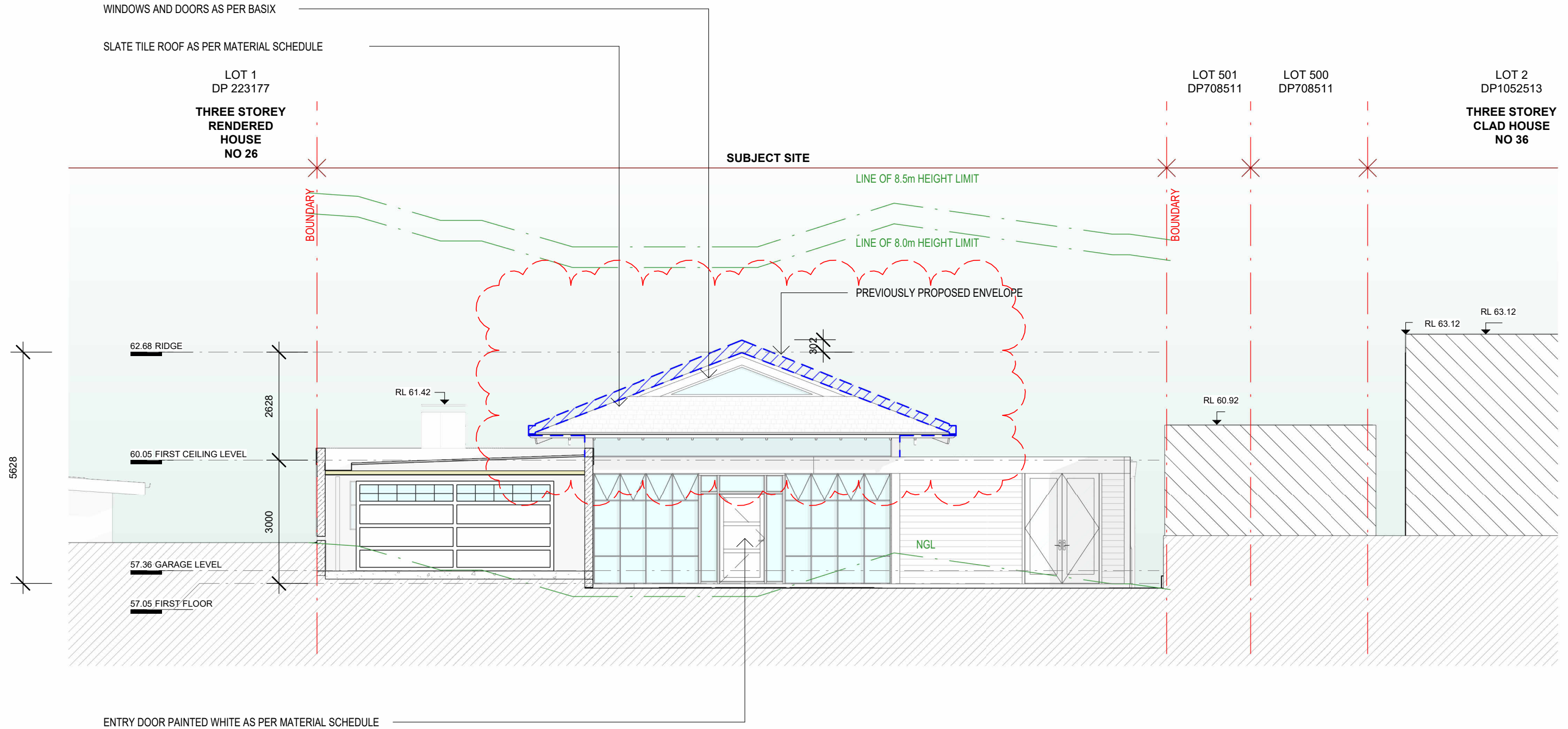
Scale As indicated @A3 Date: 13.12.22

2011 **DA** **A008**

Project no. Drawing Phase. Drawing No. Rev

0 2000 4000 6000mm
SCALE 1:200 AT ORIGINAL SIZE

DA ISSUE



1 EASTERN ELEVATION
1 : 100

0 1000 2000 3000mm
SCALE 1:100 AT ORIGINAL SIZE

DA ISSUE

Notes

- 1) Do not scale from drawing, use marked dimensions and levels. To be read in conjunction with all consultants' documentation. Luxitecture. is to be immediately notified of any discrepancies.
- 2) Contractor to verify all dimensions, coordinate services and components prior to commencement of site work or off-site fabrication and installation.
- 3) All construction must be built to minimum requirement set outs by the Building Code of Australia and relevant Australian Standards. Luxitecture. is to be notified immediately of any discrepancies to the above, and confirmation sought.
- 4) Copyright on this drawing and design retained by Luxitecture.

Issue	Description	Date
1	DA ISSUE	13.12.22
2	DA RFI 01	15.08.23

www.luxitecture.com.au
anthony@luxitecture.com.au

LUXITECTURE

True North

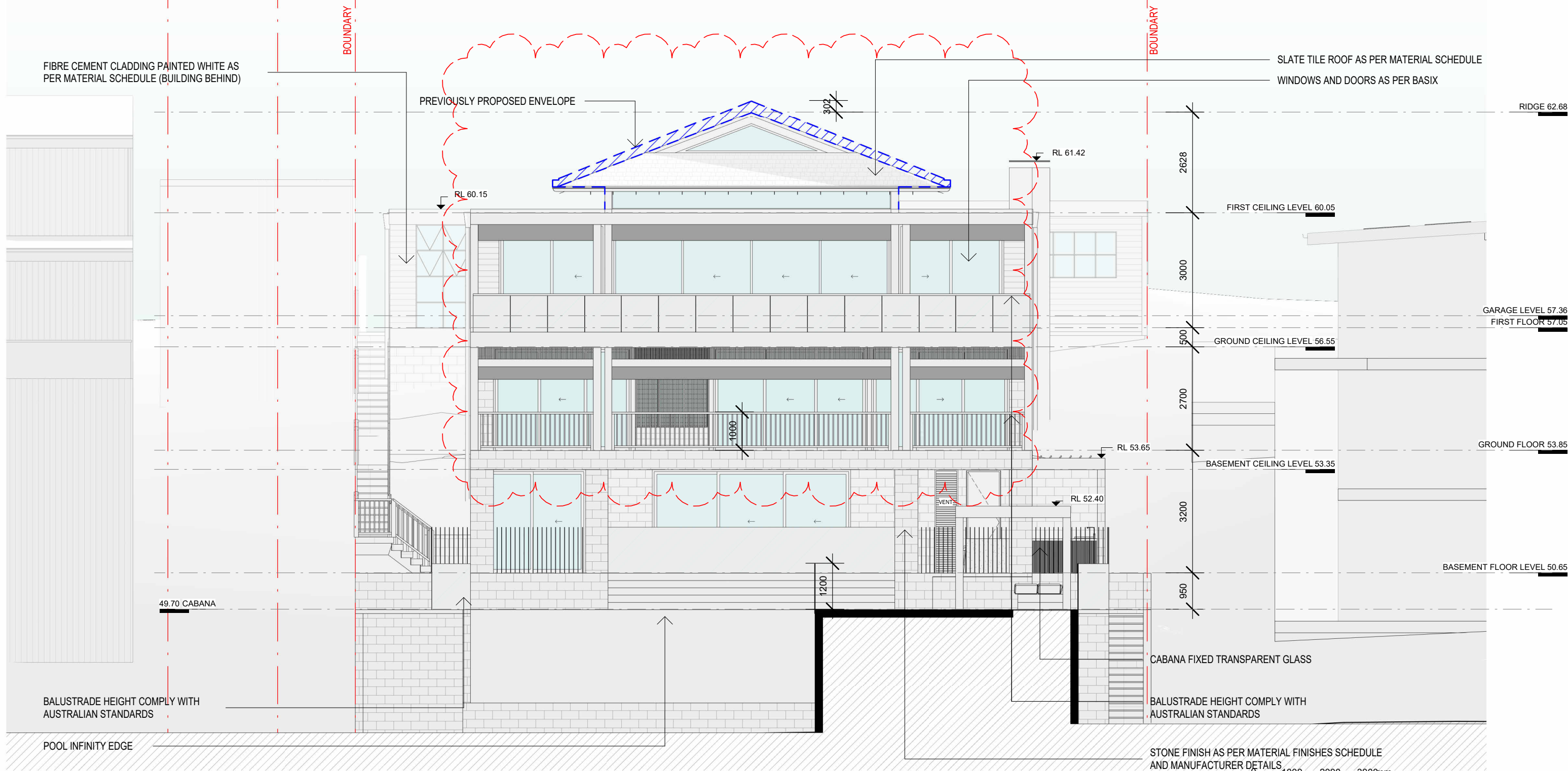
Drawn: JF Checked: AM

Project
**2129
SEAFORTH**
Client
ADAM MCDOUGALL
Address
**30 ABERNETHY STREET
SEAFORTH**

Drawing Title ELEVATIONS			
FOR DEVELOPMENT APPLICATION			
Scale 1: 100 @A3	Date:15.08.23		
2011 Project no.	DA Drawing Phase.	A200 Drawing No.	2 Rev

v

SUBJECT SITE



1 WESTERN ELEVATION
1 : 100

0 1000 2000 3000mm
SCALE 1:100 AT ORIGINAL SIZE

DA ISSUE

Notes

- 1) Do not scale from drawing, use marked dimensions and levels. To be read in conjunction with all consultants' documentation. Luxitecture. is to be immediately notified of any discrepancies.
- 2) Contractor to verify all dimensions, coordinate services and components prior to commencement of site work or off-site fabrication and installation.
- 3) All construction must be built to minimum requirement set outs by the Building Code of Australia and relevant Australian Standards. Luxitecture. is to be notified immediately of any discrepancies to the above, and confirmation sought.
- 4) Copyright on this drawing and design retained by Luxitecture.

Issue	Description	Date
1	DA ISSUE	13.12.22
2	DA RFI 01	15.08.23

www.luxitecture.com.au
anthony@luxitecture.com.au

LUXITECTURE

True North

Drawn: JF

Checked: AM

Project
**2129
SEAFORTH**
Client
ADAM MCDOUGALL
Address
**30 ABERNETHY STREET
SEAFORTH**

Drawing Title

ELEVATIONS

FOR DEVELOPMENT APPLICATION

Scale 1 : 100 @A3

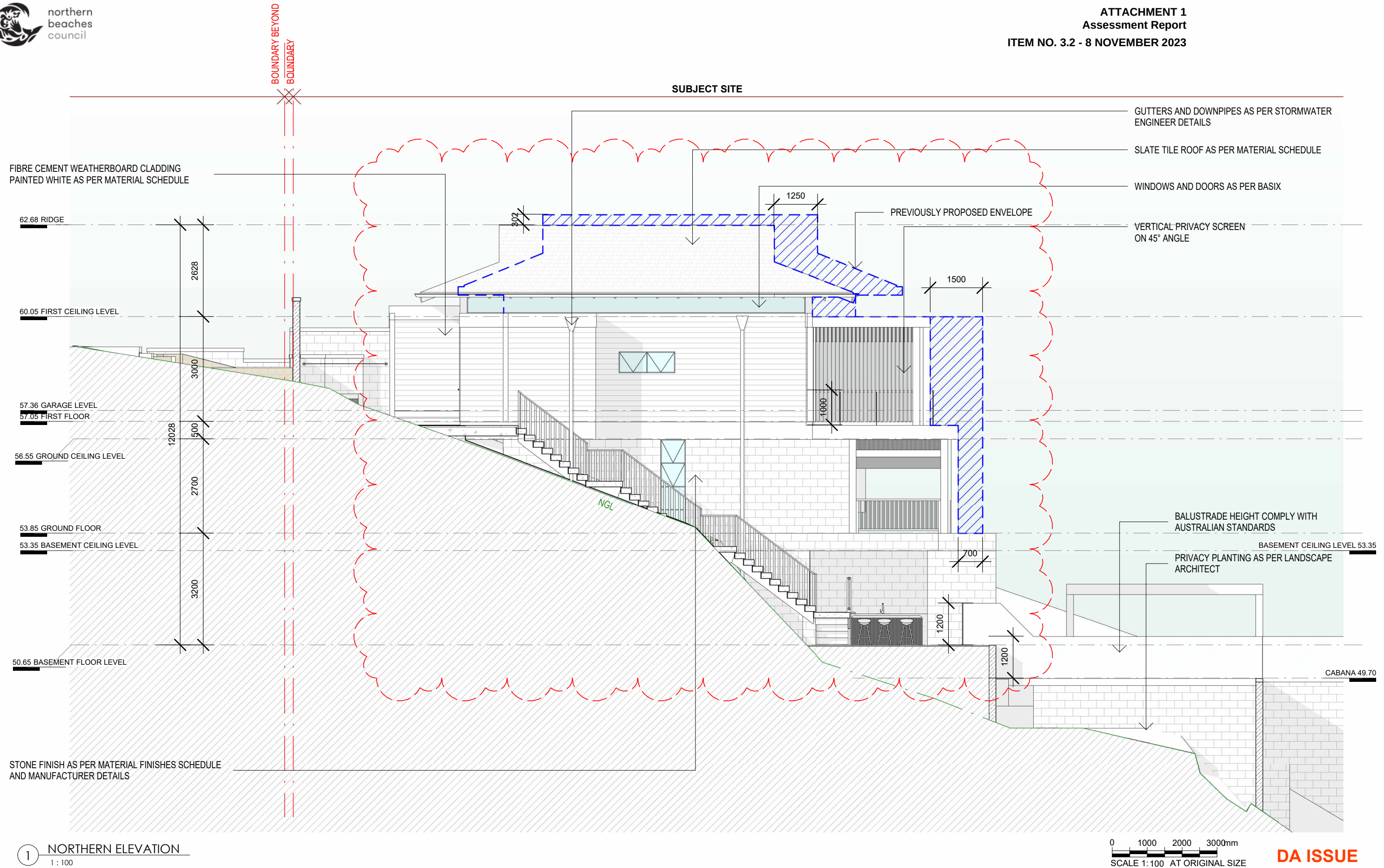
Date:15.08.23

2011
Project no.

DA
Drawing Phase.

A202
Drawing No.

2
Rev



1 NORTHERN ELEVATION
1:100

Notes

- 1) Do not scale from drawing, use marked dimensions and levels. To be read in conjunction with all consultants' documentation. Luxitecture. is to be immediately notified of any discrepancies.
- 2) Contractor to verify all dimensions, coordinate services and components prior to commencement of site work or off-site fabrication and installation.
- 3) All construction must be built to minimum requirement set outs by the Building Code of Australia and relevant Australian Standards. Luxitecture. is to be notified immediately of any discrepancies to the above, and confirmation sought.
- 4) Copyright on this drawing and design retained by Luxitecture.

Issue	Description	Date
1	DA ISSUE	13.12.22
2	DA RFI 01	15.08.23

www.luxitecture.com.au
anthony@luxitecture.com.au

LUXITECTURE

True North

Drawn: JF	Checked: AM
-----------	-------------

Project
**2129
SEAFORTH**
Client
ADAM MCDOUGALL
Address
**30 ABERNETHY STREET
SEAFORTH**

Drawing Title ELEVATIONS			
FOR DEVELOPMENT APPLICATION			
Scale 1:100 @A3	Date:15.08.23		
2011 Project no.	DA Drawing Phase.	A203 Drawing No.	2 Rev



Suite 1, 9 Narabang Way Belrose NSW 2085 | Phone: (02) 9986 2535 | Fax: (02) 9986 3050 | www.bbfplanners.com.au

Clause 4.6 variation request - Height of buildings (clause 4.3 MLEP 2013)

1.0 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.

2.0 Manly Local Environmental Plan 2013 (“MLEP”)

2.1 Clause 4.3 - Height of buildings

Pursuant to Clause 4.3 of Manly Local Environmental Plan 2013 (MLEP) the height of a building on the subject land is not to exceed 8.5 metres in height. 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.

It has been determined that the proposal has a maximum building height of 8.9m measured to the top of the clerestory roof through the centre of the site.

The building exceeds the height standard by a maximum 400mm or 4.7% as depicted in section drawing shown below. The design has been further refined from the previous scheme and details the reduction in height.

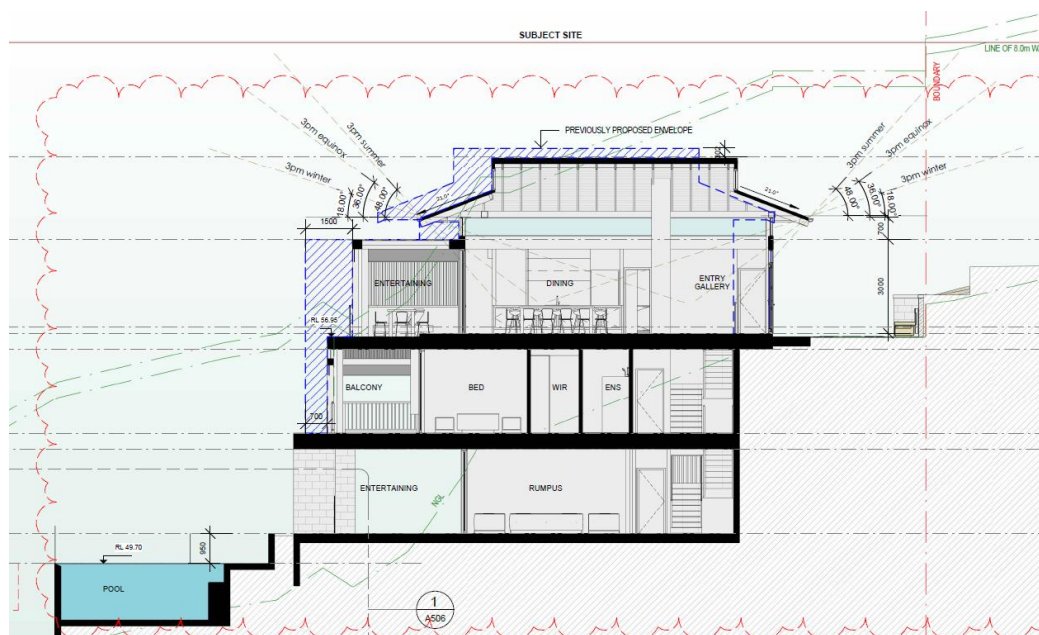


Figure 1 – Extent of 8.5 metre height of building breach located centrally on the site

The height is taken from natural ground level. The excavation at the lower level is proposed and not existing.

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of MLEP provides:

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

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

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

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

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

Clause 4.6(2) of MLEP provides:

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

This clause applies to the clause 4.3 Height of Buildings Development Standard.

Clause 4.6(3) of MLEP provides:

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

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

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

The proposed development does not comply with the height of buildings provision at 4.3 of MLEP which specifies a maximum building height 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 provides:

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

(a) the consent authority is satisfied that:

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

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

(b) the concurrence of the Director-General has been obtained.

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]).

The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may

assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of MLEP provides:

(5) *In deciding whether to grant concurrence, the Director-General must consider:*

- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) *the public benefit of maintaining the development standard, and*
- (c) *any other matters required to be taken into consideration by the Director-General before granting concurrence.*

As these proceedings are the subject of an appeal to the Land & Environment Court, the Court has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), without obtaining or assuming the concurrence of the Secretary under cl 4.6(4)(b), by reason of s 39(6) of the Court Act. Nevertheless, the Court should still consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.3A of MLEP from the operation of clause 4.6.

3.0 Relevant Case Law

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

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

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

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

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

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

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

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

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

4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?

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

4.0 Request for variation

4.1 Is clause 4.3 of MLEP a development standard?

The definition of “development standard” at clause 1.4 of the EP&A Act includes:

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

Clause 4.3 MLEP prescribes a height provision that relates to certain development. Accordingly, clause 4.3 MLEP is a development standard.

4.2A Clause 4.6(3)(a) – Whether compliance with the development standard is unreasonable or unnecessary

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

The first option, which has been adopted in this case, is to establish that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Consistency with objectives of the height of buildings standard

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

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

Response: The building height proposed is consistent with the built form characteristics established by surrounding development and development generally within the site's visual catchment. The breach occurs to the centrally located clerestory roof architectural feature which is centrally located on site with only the western edge of the roof encroaching. The dwelling will still present as part 1 and 2 storey dwelling within the streetscape and is considered consistent with the desired future character of the area. A

streetscape elevation, shown below, demonstrates the development is reasonable within the context of the streetscape.

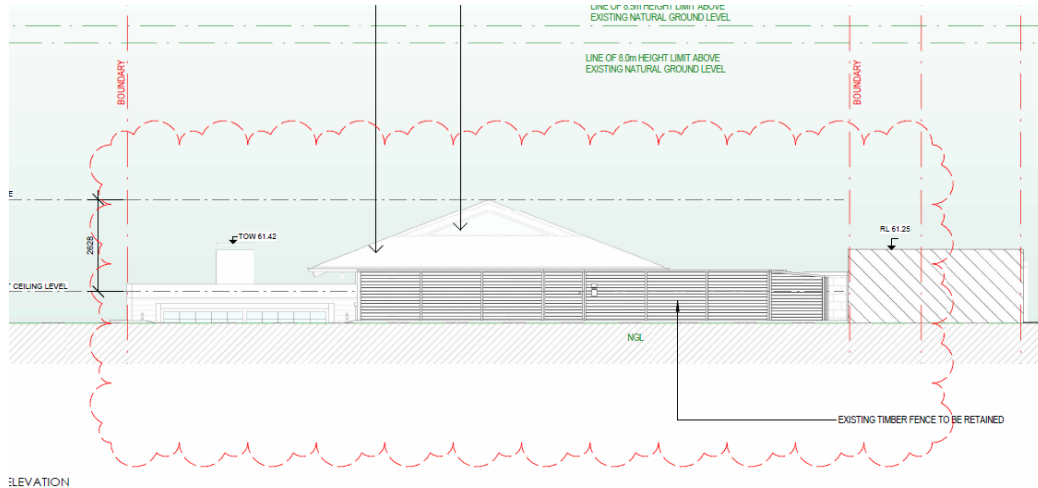


Figure 2: Streetscape (east) elevation

The building is consistent with the prevailing building heights in the area which step down the steep topography. Dwellings are predominately 3 storeys which reflect the constraints of the land form.

The maximum level to the roof ridge proposed is RL 62.68. The adjoining dwelling at No. 36 to the north will sit higher than the subject site. The roof ridge level is also consistent with the existing maximum level of No. 26. In this regard, the proposal would not be incompatible with existing development in the streetscape.

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 roof form and building height offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the sites visual catchment. In forming this opinion, I note that the street facing façade is comfortably below the 8.5 metre height standard with the streetscape presentation depicted in Figure 5 below.

The development achieves this objective as it displays a building height and roof form 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,*

Response: This objective is explanatory of the purpose of the height of building standard. The objective is not an end in itself. The objective is explanatory of the central purpose of the standard. By fixing different upper limits for the height of buildings on land in different areas by means of the building height map the clause does seek to control bulk and scale of buildings. The establishment of upper limit for height is not the end to be achieved by the clause rather it is a means to achieve the other objectives of the standard that are dealt with above and below (*Baron Corporation Pty Limited –v- the City of Sydney Council [2019] NSWLEC 61* at [48]-[49]).

In any event, for the reasons outlined in relation to objective (a) above I have formed the considered opinion that the bulk and scale of the building, having regard to the elements of the building exceeding the 8.5 metre height standard, is contextually appropriate with the floor space appropriately distributed across the site to achieve acceptable streetscape and residential amenity outcomes.

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 sites visual catchment.

The proposal achieves this objective.

(c) *to minimise disruption to the following:*

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

Response: The buildings compliance with the height standard where it adjoins Abernethy Street minimises the disruption of views to nearby residential development from the adjoining public spaces with the significant distance between the Harbour and its foreshores and the subject site ensuring no discernible disruption of views to nearby residential development as a consequence of the building height breach.

The proposal achieves this objective.

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

Response: The proposal has been assessed against the view sharing planning principle.

Step 1: assessment of views to be affected.

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

The views currently obtained by No. 26 are considered to be unaffected by the proposal.

The views obtained by No. 36 are understood to take in 'iconic' elements of the City Skyline which are taken across the side boundary.



Figure 4: View from No. 36 Abernathy – Height Poles showing the previous location of the dwelling

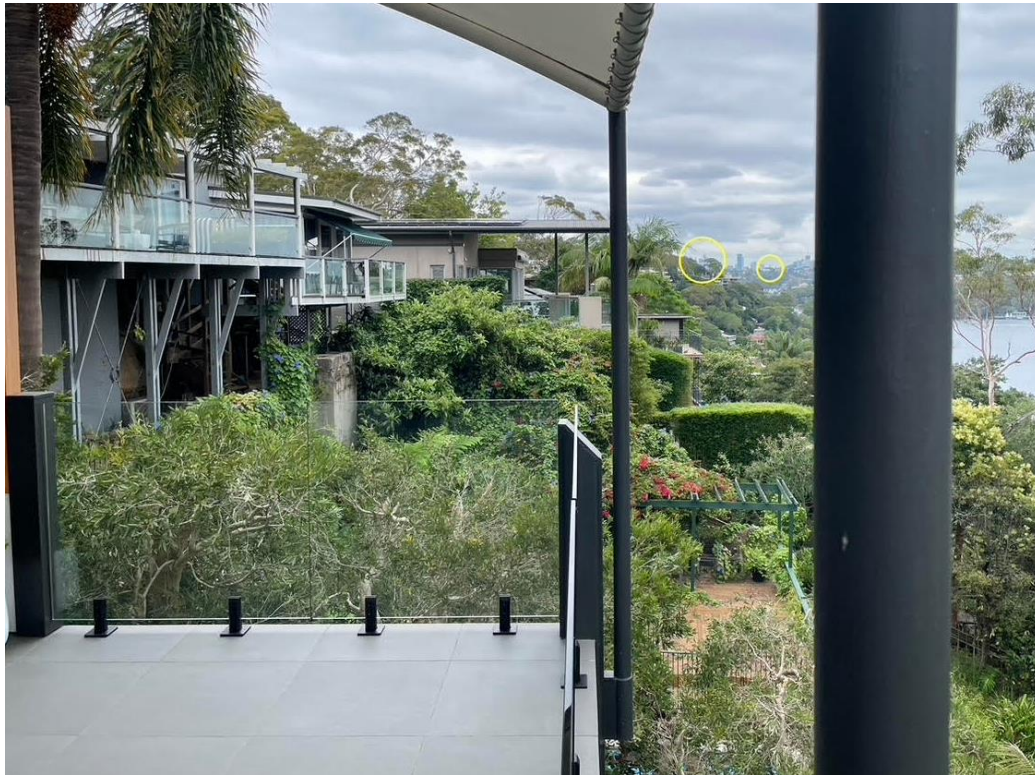


Figure 5: View from No. 36 Abernathy Balcony

Step 2: consider from what part of the property the views are obtained.

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

The views are obtained from the primary habitable area and balcony. The views are only accessed across the side boundary which are considered harder to retain.

Step 3: assess the extent of the impact.

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

includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating."

The extent of the impact is considered negligible. The amendments to the plans will improve the view corridors across the side from the previously submitted scheme.

Notwithstanding that amendments to the design have been provided to protect the 'iconic' views towards the city. We note that prior to 2015 no view of the city skyline was achieved due to it being blocked by trees and vegetation. Satellite images from 2015, provided below, shows significant native canopy trees along the boundary with the subject site.



Figure 6: Satellite image from November 2015 – date is circled bottom right of the image

Recent satellite images taken from the NSW Government Six Maps website shows the canopy of the native trees has been removed.



Figure 6: Recent Satellite image showing tree canopy removed.

Below is an image taken from the balcony of No. 36 prior to 2015 with trees and vegetation blocking the side boundary view to the city.



Figure 8: View from No. 36 Balcony from prior to 2015

The recent images taken from the balcony show a significant difference.



Figure 9: Current view from balcony from No. 36

The current access to the view is a significant enhancement from 2015 with no tree limbs or vegetation blocking the view corridor.

For the reasons stipulated above, the impact on this view is considered to be negligible or, in fact, there is no impact as the view corridor is heavily impacted by existing trees and vegetation.

Step 4: assess the reasonableness of the proposal that is causing the impact.

"The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable."

The proposal is supported by 2 clause 4.6 requests with regard to FSR and height of buildings. The non-compliances do not contribute to any view loss and the clause 4.6's are well founded. The scheme has been further reduced to improve view corridors from No. 36 despite the view being accessed across the side boundary and susceptible to impact by existing trees and vegetation. The primary aspect view to the west will be unaffected.

Having reviewed the detail of the application we have formed the considered opinion that a view sharing scenario is maintained between adjoining properties in accordance with the clause 3.4.3 MDCP control and the principles established in the matter of Tenacity Consulting Pty Ltd v Warringah Council [2004] NSWLEC140 and Davies v Penrith City Council [2013] NSWLEC 1141.

The proposal achieves the objective of minimising view impact as demonstrated by the view sharing outcome achieved.

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

Response: The building form and height has been appropriately distributed across the site to minimise disruption of views between public spaces with a compliant building height achieved where the development adjoins Abernethy Street.

The proposal achieves this objective.

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

Response: The shadow diagrams provided within the architectural set demonstrate that the building height breaching portion of the development will not give rise to any unacceptable shadowing impact to the property to the south.

The proposal achieves this objective.

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

Response: This objective is not applicable.

Having regard to the above, the non-compliant component of the building will achieve the objectives of the standard to at least an equal degree as would be the case with a development that complied with the building height standard. Given the developments consistency with the objectives of the height of buildings standard strict compliance has been found to be both unreasonable and unnecessary under the circumstances.

Consistency with zone objectives

The subject site is zoned R2 Low Density Residential pursuant to the provisions of MLEP. Dwelling houses are permissible in the zone with the consent of council. The stated objectives of the zone are as follows:

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

Response: The development seeks to reinstate a dwelling house on the site which will provide for the housing needs of the community within a low density residential environment. The proposal is consistent with this objective.

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

Response: N/A

The proposed works are permissible and consistent with the stated objectives of the zone.

The non-compliant component of the development, as it relates to building height, demonstrates consistency with objectives of the R2 Low Density Residential zone and the height of building standard objectives. Adopting the first option in *Wehbe* strict compliance with the height of buildings standard has been demonstrated to be unreasonable and unnecessary.

4.2B Clause 4.6(4)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

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

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

25. *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 exist to justify the height of buildings variation which include:

- The steep topography makes strict compliance with the building height standard challenging in this instance.
- The topography gradient averages 43.5% across the site with vertical rock shelves present in the buildable area. Images below demonstrates the rocky and steep topography



Figure 9: Steep rock shelves on site

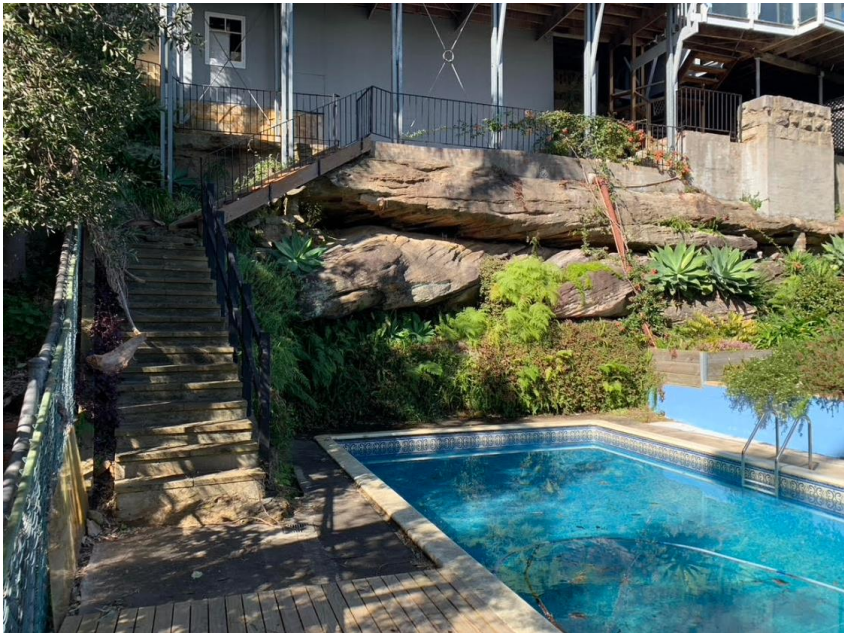


Figure 10: Rock Shelves

- The proposed dwelling is consistent with the scale and number of storeys with regard to development within the immediate vicinity. Dwellings in the area are multi-storey which reflects the steep topography. Drawing A201, southern elevation, provides an outline of the adjoining dwelling at No. 36. The outline is highlighted in yellow and demonstrates the reasonable scale in terms of height of the proposal.

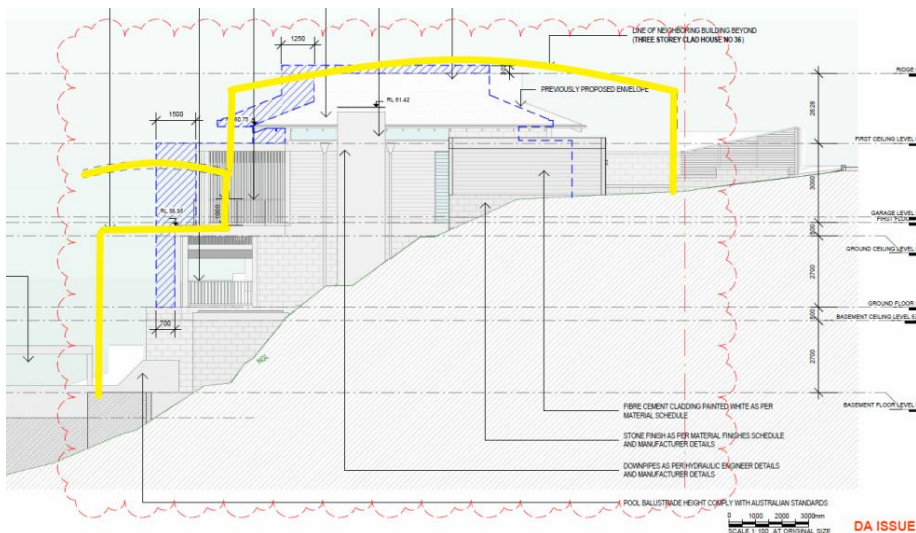


Figure 10: Southern Elevation showing the height compatibility

- The ability of the dwelling to step down the slope is negated by the steepness however amendments have been made to push the first floor back towards the front boundary. The dwelling will better reflect the topography of the site in that regard which generally encourages development to step down sloping sites.
- The proposal will reduce the height of the dwelling as it relates to the streetscape and will contribute positively to its character above that of the existing dwelling. Streetscape analysis is provided below which shows the existing unusual built form to be demolished to be replaced with a more traditional cohesive design.

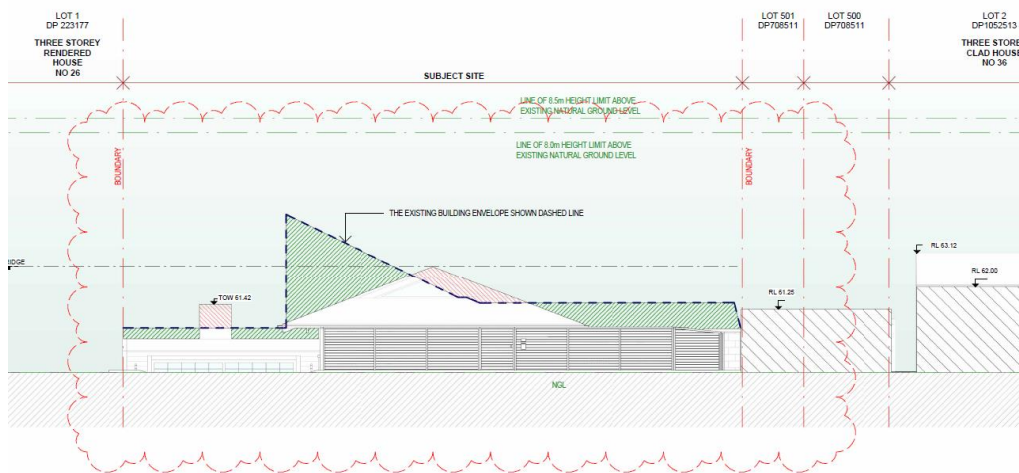


Figure 11: Existing and Proposed streetscape view

The height of the dwelling as it presents to the streetscape will be reduced.

- The undersize lot size, existing canopy trees and existing overshadowing of the subject site make providing adequate internal solar access difficult. The design choice for a clerestory window achieves adequate solar access into the dwelling. It has been centrally located to minimise any adverse impacts on neighbours.

In this regard, I consider the proposal to be of a skilful design which responds appropriately and effectively to the above constraints by appropriately distributing floor space, building mass and building height across the site in a manner which provides for appropriate streetscape and residential amenity outcomes including a view sharing scenario.

Such outcome is achieved whilst realising the reasonable development potential of the land.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposal promotes the orderly and economic use and development of land (1.3(c)).
- The development represents good design (1.3(g)).
- The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(h)).

It is noted that in *Initial Action*, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. *The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.*

There are sufficient environmental planning grounds to justify contravening the development standard.

4.3 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 4.3A and the objectives of the R2 Low Density Residential zone

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

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

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

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

As demonstrated in this request, the proposed development 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.

Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

4.4 Secretary's concurrence

By Planning Circular dated 21st February 2018, the Secretary of the Department of Planning & Environment advised that consent authorities can assume the concurrence to clause 4.6 request except in the circumstances set out below:

- Lot size standards for rural dwellings;
- Variations exceeding 10%; and
- Variations to non-numerical development standards.

The circular also provides that concurrence can be assumed when an LPP is the consent authority where a variation exceeds 10% or is to a non-numerical standard, because of the greater scrutiny that the LPP process and determination s are subject to, compared with decisions made under delegation by Council staff.

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

5.0 Conclusion

Pursuant to clause 4.6(4)(a), the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

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

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

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



Clause 4.6 for Height

Yours Sincerely

William Fleming
BS, MPLAN
Boston Blyth Fleming Pty Ltd
Director

ITEM 3.3**DA2023/0703 - 6-7 KARA CRESCENT BAYVIEW -
ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
INCLUDING A SWIMMING POOL****REPORTING MANAGER****Steve Findlay****TRIM FILE REF****2023/709468****ATTACHMENTS**

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

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of PLEP 2014 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2023/0703 for alterations and additions to a dwelling house including a swimming pool on land at Lot 100 DP 1298273, 6 - 7 Kara Crescent BAYVIEW, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0703
Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 100 DP 1298273, 6 - 7 Kara Crescent BAYVIEW NSW 2104
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool
Zoning:	C4 Environmental Living R5 Large Lot Residential
Development Permissible:	Yes - Zone R5 Large Lot Residential Yes - Zone C4 Environmental Living
Existing Use Rights:	Yes
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	Yes
Owner:	Matthew Alexander Baxter Alexandra Louise Baxter
Applicant:	Campbell Architecture
Application Lodged:	14/06/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	23/06/2023 to 07/07/2023
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 22.3%
Recommendation:	Approval
Estimated Cost of Works:	\$ 5,526,374.00

EXECUTIVE SUMMARY

The application involves alterations and additions to the existing dwelling and construction of a swimming pool.

There has been a recent consolidation of two lots (Lot 3 and 4, DP 1194872), which has created the current site, known as 6-7 Kara Crescent (Lot 100), and the dwelling on former Lot 3, 6 Kara Crescent has been demolished.

The application is referred to the Development Determination Panel (DDP) as the proposal seeks a variation to the development standard for Building Height up to 10.4m being 22.3% above the 8.5m development standard. The majority of the built form is under 8.5m.

The 4.6 request for the non-compliance with the Building Height development standard arises from the a minor section of the upper level at the north-eastern corner. The natural ground level of the site has been altered from previous development and the vertical change is a result of this historical development. Retracting the eastern elevation north eastern corner of the dwelling would not result in any significant change to the visual presentation of the building.

A submission has been addressed in this report with conditions assisting in addressing concerns about construction impacts. With regard to privacy, the proposal is well designed with stepping and substantial physical separation from neighbours.

It has also been found that the proposal will provide sufficient protection of the amenity for neighbours. This includes maintaining large setbacks to allow corridors for views and solar access, and as above, suitable spacing for privacy. The proposal also steps with the topography of the site, and provides an increase to the total amount of landscaped area (as compared to the previous situation on site with two dwellings).

Accordingly, the application is referred to the DDP with a recommendation for APPROVAL.

PROPOSED DEVELOPMENT IN DETAIL

The proposal is for alterations and additions to the existing dwelling and construction of a swimming pool.

In detail this involves:

Level 0

- Excavation for new lift space
- Relocation of stairs
- Changes to openings
- Reconfiguration of floor space to create new gym facilities
- New brick columns to replace existing

Level 1

- Extension comprising entry and foyer, new living, kitchen and dining areas to north west of existing structure
- New terrace and pergola structures to east and west
- Internal reconfiguration
- New study
- Relocation of internal stair access
- Remove existing awnings over existing terraces
- Demolish existing shed
- Extend and join existing driveway
- New porte cochère

Level 2

- Demolish existing high pitched roof, dormers , and internal walls
- Construct new flat roof and parapet over level below, solar panels, and new metal pitched roof over bath 1 below
- Construct new planter to eastern elevation at this level adjoining pergola.
- Extend floor space over southern end and central area of footprint, including partially over new northern wing, to provide 4 bedrooms and 4 bathrooms
- Extend lift access to this level, including to central pergola area and new terrace 4 over Level 1
- Construct new metal roof over at reduced pitch

External

- Convert existing swimming pool to be water tank with Landscaping over
- Construction of a new swimming pool
- Landscaping
- New cloister garden and Loggia

ASSESSMENT INTRODUCTION

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

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

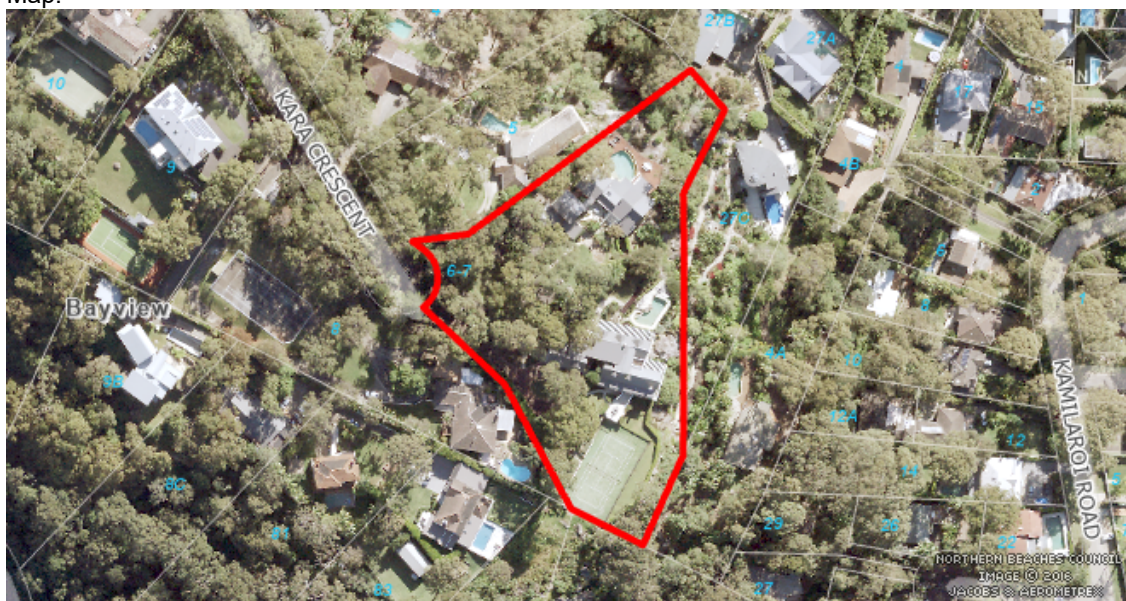
SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater 21 Development Control Plan - D2.6 Side and rear building line
Pittwater 21 Development Control Plan - D2.9 Landscaped Area - Non Urban

SITE DESCRIPTION

Property Description:	Lot 100 DP 1298273 , 6 - 7 Kara Crescent BAYVIEW NSW 2104
Detailed Site Description:	The subject site consists of two allotments located at the eastern end of Kara Crescent. The site is irregular in shape with a frontage at the end of a cul-de-sac. The site has a total surveyed area of 8594m². The site is located is predominantly within the R5 Large Lot Residential zone but also has a section of c4 Environmental Living zoning to the rear of Lot 3 (6 Kara Crescent). The site accommodates a dwelling house on Lot 4 (7 Kara Crescent). A dwelling house on Lot 3 (6 Kara Crescent) has recently been demolished. The site generally slopes to the north and contains large, and contains large rock features to the rear of the site. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by residential development on large lots within an natural setting.

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:

- DA2018/1726 - Alterations and additions to 7 Kara Crescent.
- CDC2021/0185 - Approved for demolition of 6 Kara Crescent.
- 2023 - Consolidation of Lot 3, DP 1194872 (No. 6 Kara Crescent) and Lot 4, DP 1194872 (No. 7 Kara Crescent).

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 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater Development Control Plan section in this report.

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

EXISTING USE RIGHTS

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

Name:	Address:
Mr Christopher James Gatford	4 A Kamilaroi Road BAYVIEW NSW 2104

The above issues are addressed as follows:

- **Privacy**

The submission raised concern that the additional height will cause privacy issues.

Comment:

At the eastern elevation of the building the existing roof height is lowered, and the openings remain at a similar level. The proposed new openings at the second storey level on the eastern

elevation are in excess of 20m to the neighbouring dwelling to the east, and are of a size that will not cause any unreasonable privacy impact.

- **Noise impact during construction**

Comment:

Standard conditions are imposed to ensure construction impacts are minimised.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Unsewered Lands)	General Comments The proposed development comprises alterations and additions to the existing three level dwelling, the construction of a new swimming pool, and extensive landscaping. The details of the proposal are as follows: Level 0 • Excavate and retain landform to create new lift space • Relocate stair • Various changes to openings • Reconfiguration of floor space to create new gym facilities • New brick columns to replace existing • Convert existing swimming pool to water tank and landscape over Level 1 • Construct new wing comprising entry and foyer, leading to new living, kitchen and dining areas to north west of existing structure • New terrace and pergola structures to east and west of new wing • Reconfigure internal walls and openings of existing structure to create new study 1 and bed 1 and lift access within existing floor space • Construct study 2 within the existing entry area • Relocate internal stair access • Remove existing awnings over existing terraces • Demolish existing shed, extend and join existing driveway • Construct porte cochère • Construct new swimming pool, associated facilities, and adjoining lawn and landscaping • Construct new cloister garden and Loggia Level 2 • Demolish existing high pitched roof, dormers , and internal walls • Construct new flat roof and parapet over level below, solar panels, and new metal pitched roof over bath 1 below • Construct new planter to eastern elevation at this level adjoining

Internal Referral Body	Comments
	pergola. Extend floor space over southern end and central area of footprint, including partially over new northern wing, to provide 4 bedrooms and 4 bathrooms • Extend lift access to this level, including to central pergola area and new terrace 4 over Level 1 • Construct new metal roof over at reduced pitch The site does not appear to be connected to sewer and no waste water system is registered for this address. This matter should be addressed in the SEE For Number 6 -Council records March 2022 state " I would like to notify that there is no dwelling currently on the property. The demolition of the dwelling took place last year, in 2021. Therefore there is no need to complete an application to operate an onsite waste water management system." Councils sewer main map does not appear to connect No's 6 and 7. Environmental Health cannot support the proposal at this time UPDATE 15.8.2023 Applicant has supplied information (sewage connection diagram) that the site is sewered therefore Environmental Health supports the proposal without conditions.
Landscape Officer	The proposal is supported with regards to landscape issues. Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause R5 Large Lot Residential zone, and the following Pittwater 21 DCP controls (but not limited to): • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • D2 Bayview Heights Locality The site exists upon R5 Large Lot Residential zone land and the landscape objectives of the zone includes the provision of: residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality; and limited range of other land uses of a low intensity and scale, compatible with surrounding land uses. The Arboricultural Impact Assessment (AIA) identified 53 trees of which four trees (trees 19, 28, 51 and 52) are proposed for removal. Trees 28, 51 and 52 are exempt by height, and as such can be managed or removed at the discretion of the applicant without consent. Tree 19 can be supported for removal as a significant

Internal Referral Body	Comments
	amount of high retention value trees will be retained, and replacement tree planting is shown on the Landscape Plan which will offset any canopy loss. As recommended in the AIA, a Project Arborist shall be engaged to supervise work in the tree protection zone of trees to be retained. The landscape proposal is generally supported and all proposed planting shall be installed in accordance with the requirements outlined in the conditions of consent. All natural rock outcrops outside the approved construction footprint shall be retained and protected during works. All on slab landscaping shall meet Council's minimum soil depth requirements.
NECC (Bushland and Biodiversity)	The proposal seeks approval for alterations and additions to a dwelling including a swimming pool. The comments in this referral relate to the following applicable controls and provisions: • NSW Biodiversity Conservation Act 2016 • NSW Biodiversity Conservation Regulation 2017 • Pittwater LEP - Part 7.6 Biodiversity Conservation • Pittwater 21 DCP - Clause B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor 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). A BDAR prepared by Narla Environmental (May 2023) has been submitted with the application. The BDAR confirms the presence of Pittwater and Wagstaffe Spotted Gum Forest, which is listed as an Endangered Ecological Community (EEC) under the NSW Biodiversity Conservation (BC) Act 2016. In accordance with the BDAR, the proposed impacts to biodiversity include the removal of a total of 0.03ha of PWSGF EEC, including the removal of two native trees as identified by the Arboricultural Report. The assessed residual impacts of the development result in the following offset requirements under the Biodiversity Offset Scheme: • Retirement of one Ecosystem Credit for Pittwater and Wagstaffe Spotted Gum Forest EEC (PCT 3234) • Retirement of one Species Credit for <i>Chalinolobus dwyeri</i> • Retirement of one Species Credit for <i>Vespadelus troughtoni</i> The retirement of offsets will be conditioned as part of the consent.

Internal Referral Body	Comments
	The submitted arborist report assessed a total of 52 trees and recommended the removal of 4 trees (T19, T28, T51, T52) to accommodate the proposed footprint and only one of these is a prescribed tree (T19, <i>Eucalyptus punctata</i>). Tree protection measures (fencing and mulching) recommended in the Tree Protection Plan will have to be in place before works commence to ensure retention of high value trees (T10, 12, 13, 14, 15, 16, 17, 18, 20, 21, 37, 38 and 39) and habitat as confirmed during a site visit undertaken on 03/07/2023. Lastly, a Landscape plan has been submitted with the application. No weeds have been identified on the proposed planting schedule and replacement canopy trees have been considered to compensate the removal of T19.
NECC (Development Engineering)	The proposed alterations and additions in Region 1 result in a decrease in impervious areas and hence on site detention is not required. A geotechnical report has been provided. Vehicle crossing construction is not proposed.

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	The Aboriginal Heritage Office recommends a preliminary inspection ('due diligence' under the National Parks and Wildlife Act 1974) by a qualified Aboriginal heritage professional. The assessment would provide information on what potential Aboriginal heritage issues exist on the land and recommendations for any further action if required. A condition has been imposed for this.

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. A494606).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone R5 : Yes Zone C4 : Yes
After consideration of the merits of the proposal, is the development consistent with: aims of the LEP?	Yes
zone objectives of the LEP?	Zone R5 : Yes Zone C4 : Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	8.5m	10.4m	22.3%	No (see comments)

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	10.4m
Percentage variation to requirement:	22.3%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental

planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Comment:

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

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

The Applicant's written request has not demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

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

(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:

- There is a sudden change to the ground level under the section of building that does not comply with the height standard, and the structure is built around a boulder.
- The area of height non-compliance is not isolated and not easily evident.
- The exceedance is appropriate due to context and will not cause impact.
- There is an improvement to the overall exceedance to the height of buildings standard as demonstrated below:

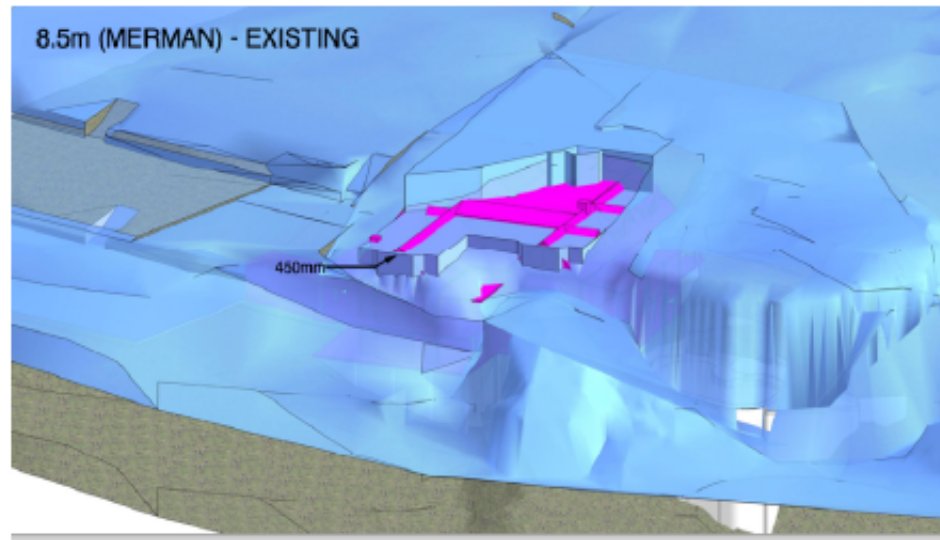


Figure 14: Non-compliance with 8.5m height limit of existing building
Source: Campbell Architecture

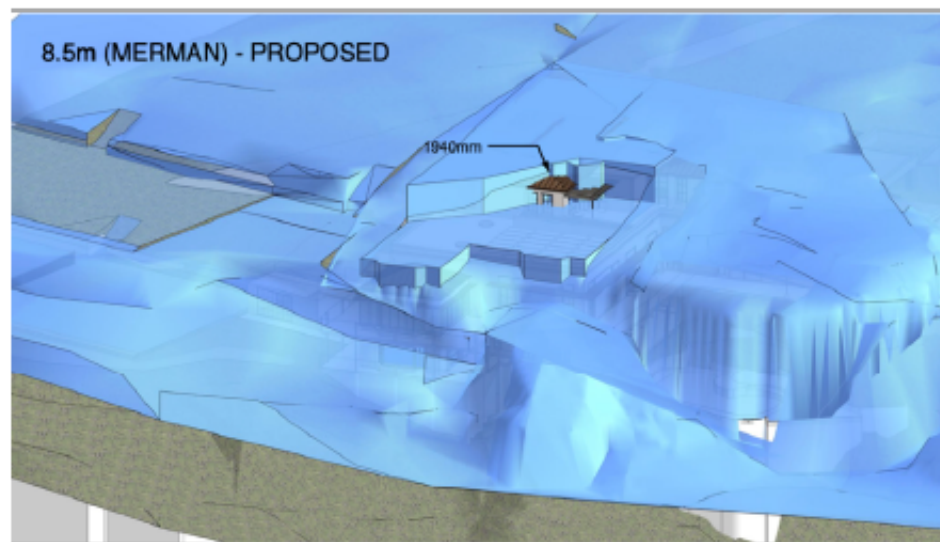


Figure 15: Reduced extent of non-compliance with 8.5m height limit of prop
Source: Campbell Architecture

It is agreed that the non-compliance can be attributed to a sudden change in ground level at the point of non-compliance. It is also agreed that there will be no unreasonable impact and that there is an

improvement on the overall amount of Building that does not comply with the 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 Height of Buildings development standard and the objectives of the R5 Large Lot Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the PLEP 2014 are:

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

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

Comment:

The proposal involves a built form that is predominantly two storeys in height, and steps well with the topography of the land. With the exception of a minor overlap (in the location of the height non-compliance), the built form steps well to respond to the change in topography.

The proposal also involves side setbacks well in excess of the numerical control, and provides substantial articulation across the site.

As such, the proposal provides a built form that is consistent with the desired character of the locality.

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

development,

Comment:

Surrounding development consists of varying height and scale, often 2 to 3 storeys in height. The proposal, being generally no more than 2 storeys in height, is compatible with the desired future character and will not visually dominate, having regard to the existing character of the area.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The proposal complies with the numerical requirements for Solar Access under the Pittwater 21 DCP. Further to this, the southern setback complies with the setback control, allowing a corridor for sunlight and minimising overshadowing.

d) to allow for the reasonable sharing of views,

Comment:

The proposal maintains appropriate setbacks and steps the building down with topography of the land. This ensures that reasonable view corridors are maintained through the site.

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

Comment:

The proposal steps well with the topography of the land and does not involve any significant excavation. As such, the design sensitively relates to the natural topography.

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

Comment:

The proposal is well designed with adequate spacing of built form from neighbours and the street. The proposal is well stepped, articulated and provides planting across the site. This ensures there will be an appropriate integration of built form with the natural environment and that there will be no unreasonable visual impact.

Zone objectives

The underlying objectives of the R5 Large Lot Residential zone are:

To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.

Comment:

The proposal provides a design that is surrounded by landscaping, and provides a sufficient control on

building bulk to minimise impact and be a suitable design for the location.

To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.

Comment:

The proposal provides a design that responds well to the controls for the zone. The proposal will therefore allow orderly development.

To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.

Comment:

The proposal is for a single dwelling across two allotments. This will not provide any unreasonable demand on public services or facilities.

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

Comment:

The siting of the dwelling adjoins the C4 Environmental Living zone. There are no building works for this C4 zone, and the area will comprise wholly of Landscaped area. This provides an appropriate outcome, and natural buffer between the adjoining zones and properties.

To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.

Comment:

The use of a dwelling is appropriate and permissible.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R5 Large Lot Residential zone.

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

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

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

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	20m	29m	N/A	Yes
Rear building line	20m	7.6m-23.8m	up to 62%	No (see comments)
Side building line	6.5m	15m	N/A	Yes
	6.5m	7.5m	N/A	Yes
Building envelope	3.5m	Within	N/A	Yes
	3.5m	Within	N/A	Yes
D2.8 Landscaped area (C4 zone)	60%	100%	N/A	Yes
D2.9 Landscaped area (R5 zone)	80%	67% (5275sqm) Existing LOS (prior to demolition of dwelling at 6 Kara Crescent): 62%	33%	No (see comments)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.2 Bayview Heights 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
B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.6 On-Street Parking Facilities	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	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
C1.14 Separately Accessible Structures	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
C5.21 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D2.1 Character as viewed from a public place	Yes	Yes
D2.2 Scenic protection - General	Yes	Yes
D2.3 Building colours and materials	Yes	Yes
D2.5 Front building line	Yes	Yes
D2.6 Side and rear building line	No	Yes
D2.7 Building envelope	Yes	Yes
D2.8 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D2.9 Landscaped Area - Non Urban	No	Yes
D2.11 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D2.12 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D2.13 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

D2.6 Side and rear building line

Description of non-compliance

Clause D2.6 of the DCP requires that built structures are to be setback 6.5m from side boundaries, and 20m from the rear boundary.

The proposal complies with the controls for side setback, providing setbacks of 15m and 7.5m. This is in excess of the numerical control (6.0m).

The proposal does not comply with the control for rear setback. The proposal involves a varied rear

setback of 7.6m to 23.8m.

Merit Consideration

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

To achieve the desired future character of the Locality.

Comment:

The proposal involves a dwelling that is generally two storeys in height and steps down with the topography of the land. The dwelling is also well surrounded by landscaping, and involves an increase to the overall landscaped area, as compared to the previous situation which involved a dwelling on each lot. This results in low-density rural residential development that appropriately fits in to a landscaped setting. Therefore, the proposal achieves the desired future character of the locality.

The bulk and scale of the built form is minimised.

Comment:

The dwelling involves a dwelling that is well articulated, steps with the topography of the land, and is well separated from neighbouring properties. Notwithstanding, a section of the rear setback not complying with the numerical control, the provides side setbacks that are in excess of the numerical controls, and also provides a section of the rear setback that is in excess of the numerical control. This provides a situation in which the presentation of visual bulk from adjoining neighbours and the public domain is minimised. Furthermore, the retention of vegetation on the site ensures and the surrounding landscaped area ensures the built form is well integrated with the existing landscape to reduce its visual dominance.

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

Comment:

The compliant side setbacks, and large section of the rear setback that also complies with the numerical control, provide a situation in which appropriate view corridors are maintained through the property.

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

Comment:

As above, the proposal will not result in any adverse impacts in relation to view sharing within the area due to appropriate view corridors being provided.

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

Comment:

The proposal exhibits compliance with the relevant privacy and solar access requirements of the P21DCP, ensuring a reasonable level of amenity for occupants of the subject site and adjoining

properties will be maintained. Windows and recreational open space areas are well designed and separated from neighbouring properties to ensure there will be no unreasonable overlooking impact. The articulation and stepping of the built form also ensures there will be no unreasonable amenity impact by virtue of height or scale of the proposal. As such, the proposal will provide a reasonable level of amenity.

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

Comment:

The subject site maintains existing mature tree canopy to soften the visual impact of the built form and maintain an attractive streetscape.

Flexibility in the siting of buildings and access.

Comment:

Flexibility in the siting of buildings is warranted in this instance as the proposed dwelling will not have any unreasonable visual impact or amenity impact. Furthermore, the overall design is well separated from neighbours and the public domain through providing large sections of the setbacks that are well in excess of the numerical controls for setbacks.

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

Comment:

The arborist report identified 49 of 53 trees on the site to be maintained (with three of the trees proposed for removal being exempt). Additionally, new planting is proposed to further assist in the visual reduction of the the built form.

A landscaped buffer between commercial and residential zones is achieved.

Comment:

The subject site does not adjoin a commercial zone, therefore this outcome is not applicable for this application.

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

Comment:

The proposal will retain existing vegetation on site to preserve the rural and bushland character of the locality. Council's Landscape officer and Biodiversity Officer also support the application, subject to conditions.

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

Comment:

As above, the subject site does not adjoin a commercial zone, therefore this outcome does not apply.

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

D2.9 Landscaped Area - Non Urban

Description of non-compliance

Clause D2.9 Landscaped Area - Non Urban of the P21DCP prescribes a minimum landscaped area of 80%. The existing landscape area (prior to the demolition of the dwelling on former 6 Kara Crescent) was 62%. The proposal involves a landscaped area of 67% (5275sqm).

It is noted that an existing driveway occupies a large area of the site, being 655sqm.

Merit Assessment

Achieve the desired future character of the Locality.

Comment:

The proposal involves a dwelling that is generally two storeys in height and steps down with the topography of the land. The dwelling is also well surrounded by landscaping, and involves an increase to the overall Landscaped area, as compared to the previous situation which involved a dwelling on each lot. This results in low-density rural residential development that appropriately fits in to a landscaped setting. Therefore, the proposal achieves the desired future character of the locality.

The bulk and scale of the built form is minimised.

Comment:

The proposal involves a dwelling that is well articulated, steps with the topography of the land, and is well separated from neighbouring properties. Notwithstanding, a section of the rear setback not complying with the numerical control, the provides side setbacks that are in excess of the numerical controls, and also provides a section of the rear setback that is in excess of the numerical control. This provides a situation in which the presentation of visual bulk from adjoining neighbours and the public domain is minimised. Furthermore, the retention of vegetation on the site ensures and the surrounding landscaped area ensures the built form is well integrated with the existing landscape to reduce its visual dominance.

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

Comment:

Notwithstanding the shortfall in landscaped area, the development provides an appropriate level of amenity and solar access to both future occupants, and to neighbouring properties through appropriate physical separation from neighbours.

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

Comment:

The arborist report identified 49 of 53 trees on the site to be maintained (with three of the trees proposed for removal being exempt). Additionally, new planting is proposed to further assist in the visual reduction of the the built form.

Conservation of natural vegetation and biodiversity.

Comment:

The proposal maintains a large number of trees on site, and provides an increase in the amount of deep soil for trees (as compared to the previous situation with a dwelling on each lot). This provides a situation in which there is a reasonable provision of vegetation and biodiversity.

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

Comment:

Council's Development Engineering department is satisfied with the proposed stormwater solution.

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

Comment:

The landscaped area to surround the dwelling and the spatial separation from neighbours, and appropriate design of the dwelling (with stepping and articulation), provides a situation in which the rural and bushland character of the area is maintained.

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

Comment:

Council's Development Engineering department is satisfied with the proposed stormwater design, due to the decrease in impervious areas.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$55,264 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$5,526,374.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

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

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

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

Planning Conclusion

The proposal generally complies with applicable planning controls, with the exception of building height, rear building line, and landscaped area.

The variations do not give rise to any unreasonable environmental or amenity impacts and are supported.

The proposal involves a design which provides sufficient minimisation of building height, bulk and scale, positively relates to the topography of the site and incorporates adequate spatial separation

from the street and neighbours to minimise amenity and environmental impacts.

The character, design and external appearance of the proposal is consistent with the provisions of P21DCP.

The Clause 4.6 Variation for Building Height is assessed as being well founded and is supported.

It is recommended that the DDP approves the application subject to the recommended conditions.

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

RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2023/0703 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 100 DP 1298273, 6 - 7 Kara Crescent, BAYVIEW, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA01	A	Site Plan and Site Analysis	Campbell Architecture	12/05/2023
DA02	A	Plan Level 0	Campbell Architecture	12/05/2023
DA03	A	Plan Level 1	Campbell Architecture	12/05/2023
DA04	A	Plan Level 2	Campbell Architecture	12/05/2023
DA05	A	Roof Plan	Campbell Architecture	12/05/2023

DA06	A	Elevation North and East	Campbell Architecture	12/05/2023
DA07	A	Elevation South and West	Campbell Architecture	12/05/2023
DA08	A	Section AA/ Schedule of Materials	Campbell Architecture	12/05/2023
L100	C	Landscape Plan	Spirit Level	15/05/2023
L101	B	Landscape Plan	Spirit Level	15/05/2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Waste Management Plan	-	Applicant	24/05/2023
Report on Geotechnical Investigation	0	Crozier Geotechnical Consultants	May 2023
Streamlined Biodiversity Development Assessment Report	Final v1.0	Narla Environmental	May 2023
Arboricultural Impact Assessment	-	Campbell Architecture	May 2023

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

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

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

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	21/06/2023

(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 site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a Dwelling house, in accordance with the Dictionary of the Pittwater Local Environmental Plan.

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 following is required:
- i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
 - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any

contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.

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

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

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools

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

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

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$55,263.74 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 \$5,526,374.00.

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

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

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

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

7. Security Bond

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

8. On Slab Landscape Works

Details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided.

Landscape treatment details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, and services connections.

The following soil depths are required to support landscaping: 300mm for groundcovers, perennials, grasses.

Design certification shall be submitted to the Certifier by a qualified Structural Engineer, that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

Reason: To ensure appropriate soil depth for planting and ensure waterproofing and drainage is installed.

9. Compliance with Ecologist's Recommendations – Pre-construction

All impact mitigation measures specified in the approved Biodiversity Development Assessment Report (Narla Environmental 2023) are to be implemented at the appropriate stage of development.

Compliance with these measures is to be certified by the Project Ecologist in writing to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.

10. 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.

11. Like for like credit retirement conditions - Ecosystem credit retirement conditions

Prior to issue of the relevant Construction Certificate the class and number of ecosystem credits in Table 19 of the submitted BDAR (Narla, May 2023) must be retired to offset the impacts of the development.

The requirement to retire credits outlined in Table 19 may be satisfied by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of ecosystem credits, as calculated by the Biodiversity Offsets Payment Calculator.

Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund in satisfaction of Table 19 requirements must be provided to the Satisfaction of Councils Bushland and Biodiversity team and to the Principal Certifier prior to release of construction certification.

Evidence will be in the form of:

- A copy of the confirmation email (from the BOS Credits team) to show that the correct type and number of credits have been retired, and from a relevant IBRA sub-region as per the offset rules, or
- If paid into the Biodiversity Conservation Fund, a copy of the section 6.33 statement.

Table 19 Ecosystem credits required to be retired – like for like

Impacted Plant Community Type	TEC	Number of ecosystem credits	Containing HBT	IBRA sub-region	Plant community type(s) that can be used to offset the impacts from development
PCT 3234: Hunter Coast Lowland Spotted Gum Moist Forest	Pittwater and Wagstaffe Spotted Gum Forest in the Sydney Basin Bioregion	1	YES	Pittwater, Cumberland, Sydney, Cataract, Wyong and Yengo	3234, 3437

Reason: To offset the residual biodiversity impacts of the development in accordance with the NSW Biodiversity Offset Scheme.

12. Like for like credit retirement conditions - Species credit retirement conditions

Prior to issue of the relevant Construction Certificate the class and number of species credits in Table 20 of the submitted BDAR (Narla, May 2023) must be retired to offset the impacts of development.

The requirement to retire credits outlined in Table 20 may be satisfied by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of ecosystem credits, as calculated by the Biodiversity Offsets Payment Calculator.

Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund in satisfaction of Table 20 requirements must be provided to the Satisfaction of Councils Bushland

and Biodiversity team and the Principal Certifier prior to release of construction certification.

Evidence will be in the form of:

- A copy of the confirmation email (from the BOS Credits team) to show that the correct type and number of credits have been retired, and from a relevant IBRA sub-region as per the offset rules, or
- If paid into the Biodiversity Conservation Fund, a copy of the section 6.33 statement.

Table 20 Species credits required to be retired – like for like

Impacted species credit species	Number of species credits	IBRA sub-region
Chalinolobus dwyeri Large-eared Pied Bat	1	Pittwater
Vespadelus trouhoni (Eastern Cave Bat)	1	Pittwater

Reason: To offset the residual biodiversity impacts of the development in accordance with the NSW Biodiversity Offset Scheme.

13. Stormwater Disposal

The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's Water Management for Development Policy. Details by an appropriately qualified and practicing Civil or Hydraulic Engineer demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with Council's policy are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

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

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by **Crozier Geotechnical Consultants** dated **15.05.2023** are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

15. Stormwater Drainage Disposal

The stormwater drainage systems for the development are to be designed, installed and

maintained in accordance with Council's Water Management for Development Policy.

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

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

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

Reason: To ensure satisfactory management of stormwater.

16. **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.

17. **Aboriginal Heritage Due Dilligence**

A 'due diligence' assessment (under the National Parks and Wildlife Act 1974) is to be undertaken by a qualified Aboriginal Heritage professional.

The assessment is to provide information on what potential Aboriginal heritage issues exist on the land and recommendations for any further action if required.

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

Reason: To ensure appropriate due diligence assessment is undertaken.

18. **Sydney Water "Tap In"**

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

19. **Project Arborist**

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged prior to any commencement of works on site to provide tree protection measures in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

a) The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, and in particular:

i) tree protection requirements and works under section 6 Recommendations, and as per the Tree Protection Plan.

b) All tree protection measures specified must:

i) be in place before work commences on the site, and

ii) be maintained in good condition during the construction period, and

iii) remain in place for the duration of the construction works.

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

Note:

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

Reason: Tree protection.

20. **Tree Removal Within the Property**

This consent approves the removal of existing trees on the subject site as identified in the Arboricultural Impact Assessment, approved Plans, or as listed below:

a) tree 19 - *Eucalyptus punctata*,

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.

21. **Temporary Protection Fencing – Exclusion Zones**

Prior to the commencement of any works onsite, temporary mesh construction fencing is to be erected surrounding areas of retained native vegetation on the site as mapped in the approved Biodiversity Development Assessment Report (Narla Environmental, 2023) and Arboricultural

Impact Assessment Report (Bluegum Tree Care and Consultancy, 2023).

Details demonstrating compliance must be prepared by the Project Ecologist and submitted to the Principal Certifier prior to any commencement.

Reason: To protect native vegetation.

DURING BUILDING WORK

22. **Protection of Rock and Sites of Significance**

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 and detailed on approved plans.

Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: Preservation of significant environmental features.

23. **Protection of Existing Street Trees**

All existing street trees in the vicinity of the works shall be retained during all construction stages, and the street tree(s) fronting the development site shall be protected by tree protection fencing in accordance with Section 4 of AS4970-2009 Protection of trees on development sites. As a minimum the tree protection fencing for street tree(s) fronting the development site shall consist of standard 2.4m panel length to four sides and in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings, unless otherwise directed by an Arborist with minimum AQF Level 5 in arboriculture. All fencing shall be located to allow for unrestricted and safe pedestrian access upon the road verge.

All street trees within the road verge 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. No excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of street trees.

Reason: Street tree protection.

24. **Tree and Vegetation Protection**

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

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

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,

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

The Principal Certifier must ensure that:

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

Reason: Tree and vegetation protection.

25. Condition of Trees

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

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

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

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

Reason: Protection of trees.

26. **Compliance with Ecologist's Recommendations – During Construction**

All impact mitigation measures specified in the approved Biodiversity Development Assessment Report (Narla Environmental, May 2023) are to be implemented at the appropriate stage of development.

Compliance with these measures is to be certified by the Project Ecologist in writing to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.

27. **Pre-clearance Survey - Certified by Project Ecologist**

Any habitat for native wildlife (including tree hollows) approved for removal is to be inspected for native wildlife by the Project Ecologist prior to its removal. If native wildlife is found within habitat to be removed, the animal is to be safely relocated by the Project Ecologist to a suitable location.

Any incidents in which native wildlife are injured or killed as a result of works are to be recorded, in addition to details of any action taken in response.

Written evidence of compliance (including records of inspections and any wildlife incidents) is to be prepared by the Project Ecologist and provided to the Principal Certifier prior to any Occupation Certificate.

Reason: To protect native wildlife.

28. **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.

29. **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.

30. **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.

31. **Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- Work Health and Safety Act;
- Work Health and Safety Regulation;

- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

32. 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.

33. 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.

34. Aboriginal Heritage

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

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

Reason: Aboriginal Heritage Protection.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

35. Landscape Completion

Landscape works are to be implemented in accordance with the approved Landscape Plan(s) (drawing L100, L101 by Spirit Level dated 15/05/23), and inclusive of the following conditions:

- a) landscape works are to be contained within the legal property boundaries,
- b) all tree planting shall be a minimum pre-ordered planting size of 75 litres; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
- c) tree, shrub and groundcover planting shall be installed as indicated on the approved

Landscape Plan(s),

d) mass planting shall be installed at minimum 1 metre intervals for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,

e) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone.

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

Reason: Environmental amenity.

36. Compliance with Ecologist's Recommendations – Post Construction

All impact mitigation measures specified in the approved Biodiversity Development Assessment Report (Narla Environmental, May 2023) are to be implemented at the appropriate stage of development.

Written and photographic evidence of compliance is to be prepared by the Project Ecologist and provided to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.

37. 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.

38. Stormwater Disposal

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

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

39. Geotechnical Certification Prior to Occupation Certificate

The Applicant is to submit the completed Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) to the Principal Certifier prior to issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

40. 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.

41. **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.

42. **Swimming Pool Requirements**

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

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

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2009;
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools

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

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

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

(e) Signage showing resuscitation methods and emergency contact

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

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

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

Reason: To protect human life.

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

43. **Landscape Maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be

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

A maintenance activity schedule for on-going maintenance of planters on slab shall be incorporated to monitor and replenish soil levels as a result of soil shrinkage over time.

The approved landscaped area shall in perpetuity remain as planting under the development consent.

Reason: To maintain local environmental amenity.

44. **Compliance with Ecologist's Recommendations – Ongoing**

All impact mitigation measures specified in the approved Flora and Fauna Assessment Report/Biodiversity Development Assessment Report are to be implemented at the appropriate stage of development.

Successful establishment/initiation of ongoing biodiversity measures is to be certified by the Project Ecologist in writing to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.

45. **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.

46. **Geotechnical Recommendations**

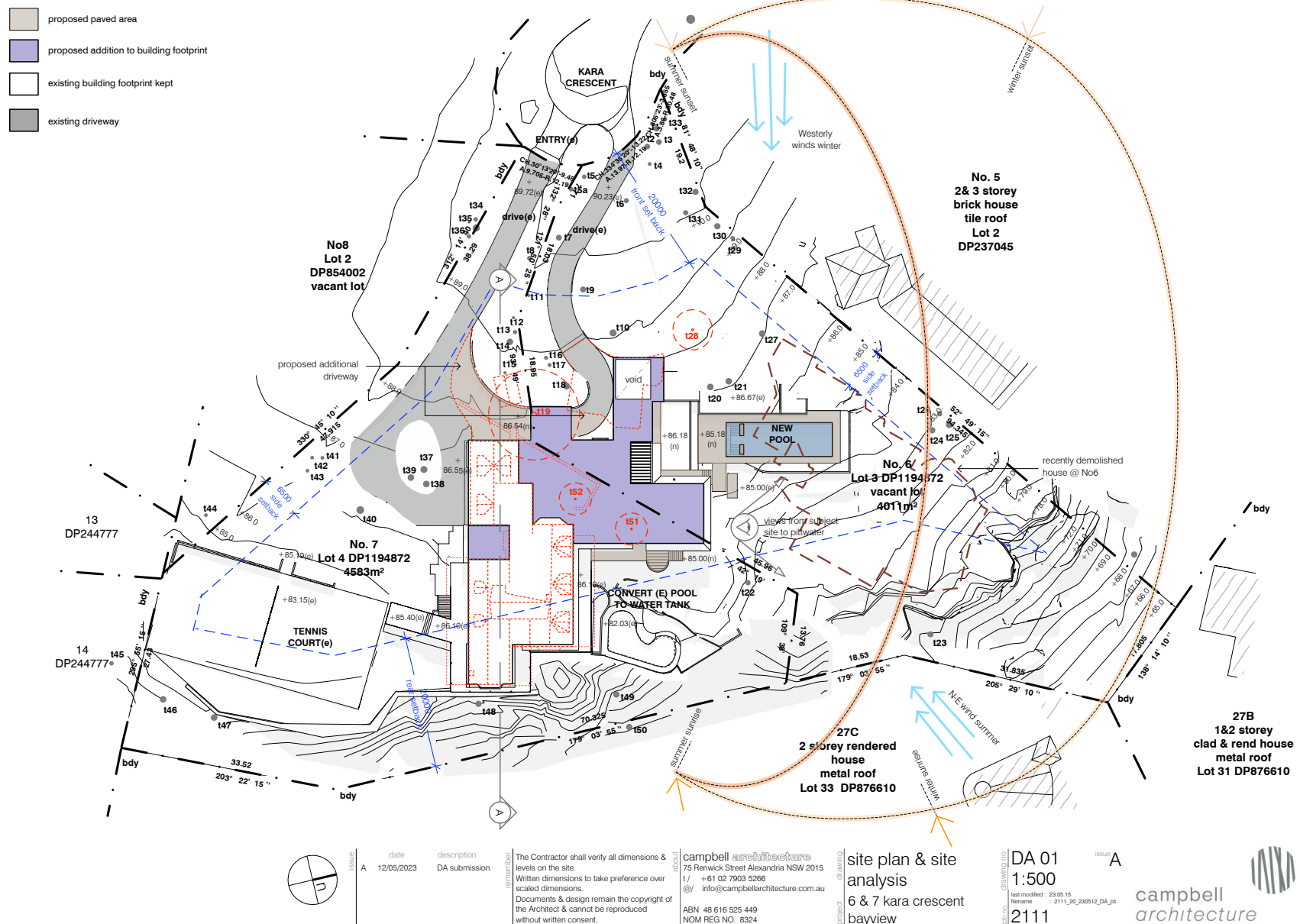
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

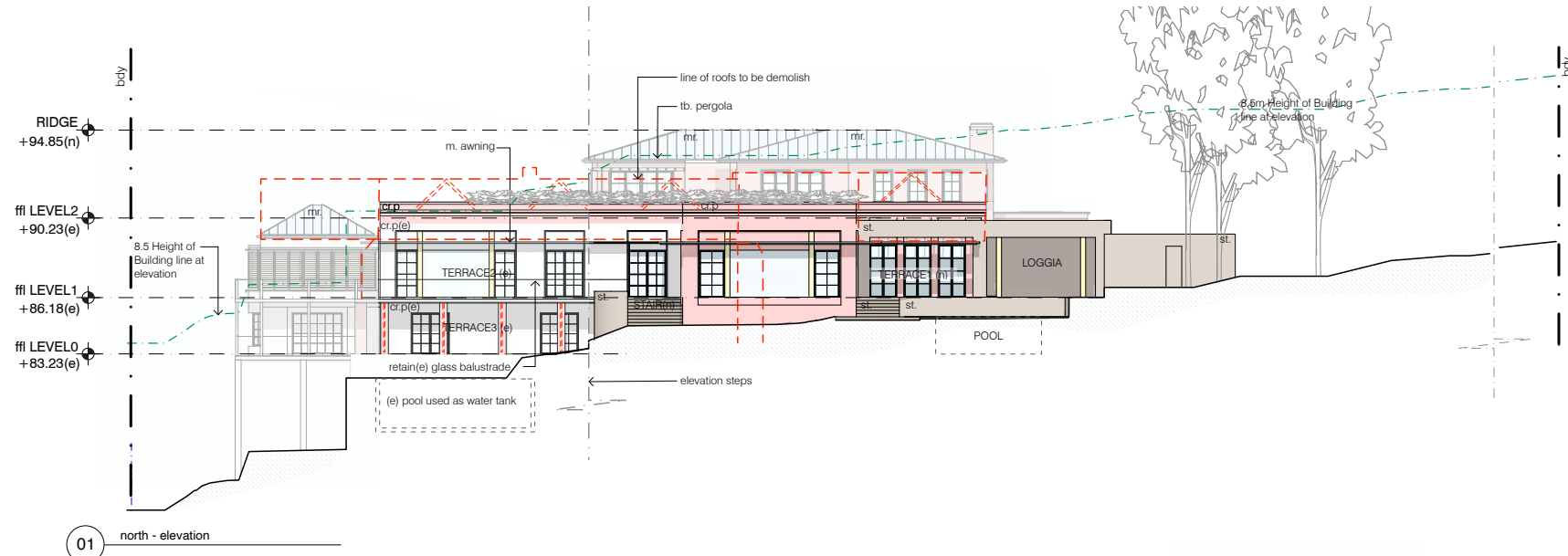
Reason: To ensure geotechnical risk is mitigated appropriately.

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

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

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





issue	date	description
A	12/05/2023	DA submission

The Contractor shall verify all dimensions & levels on the site.
Written dimensions to take preference over scaled dimensions.
Documents & design remain the copyright of the Architect & cannot be reproduced without written consent.

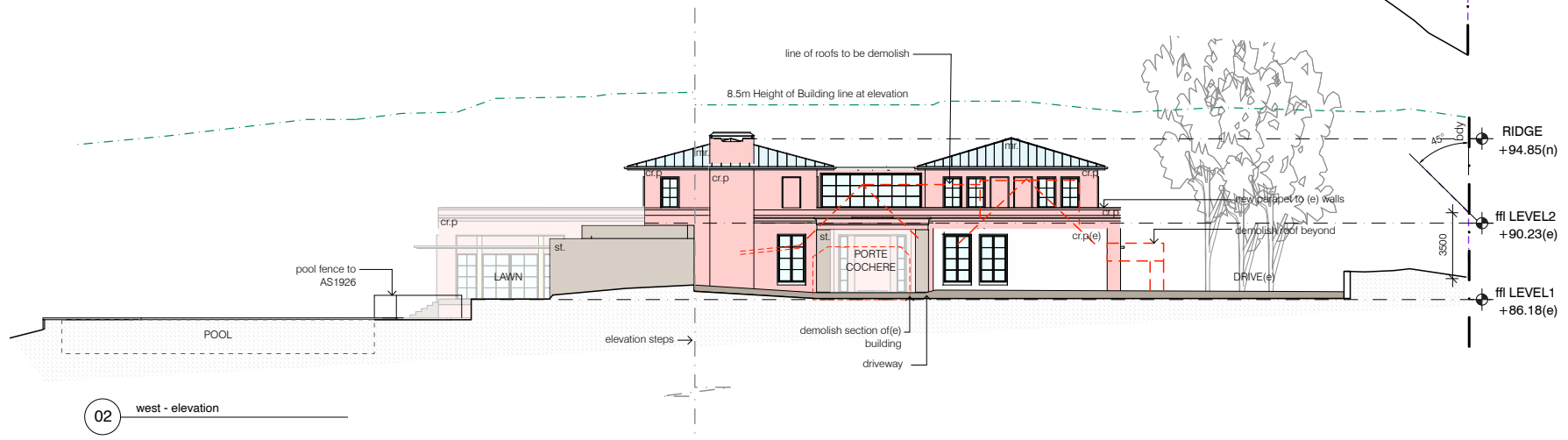
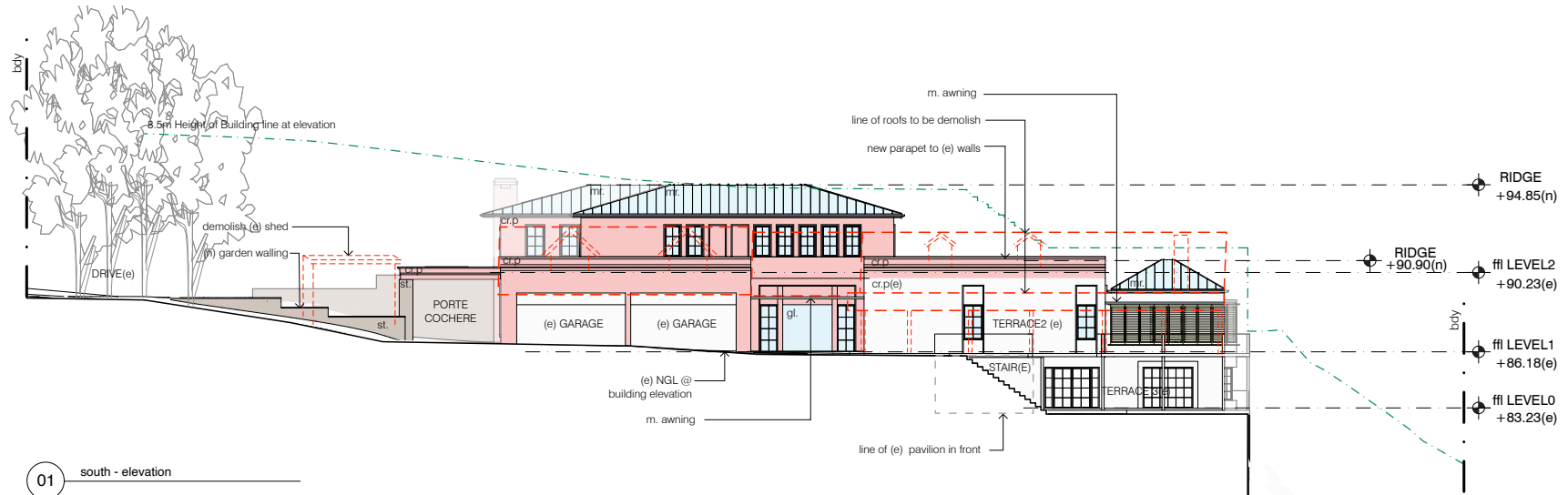
campbell architecture
75 Renwick Street Alexandria NSW 2015
t/ +61 02 7903 5266
@ info@campbellarchitecture.com.au
ABN 48 616 525 449
NOM REG NO. 8324

elevation north & east
6 & 7 kara crescent
bayview

DA 06
1:200
2111
last modified : 23.05.15
filename : 2111_20_230512_DA.plt

**campbell
architecture**





10m

issue	date	description
A	12/05/2023	DA submission

The Contractor shall verify all dimensions & levels on the site.
Written dimensions to take preference over scaled dimensions.
Documents & design remain the copyright of the Architect & cannot be reproduced without written consent.

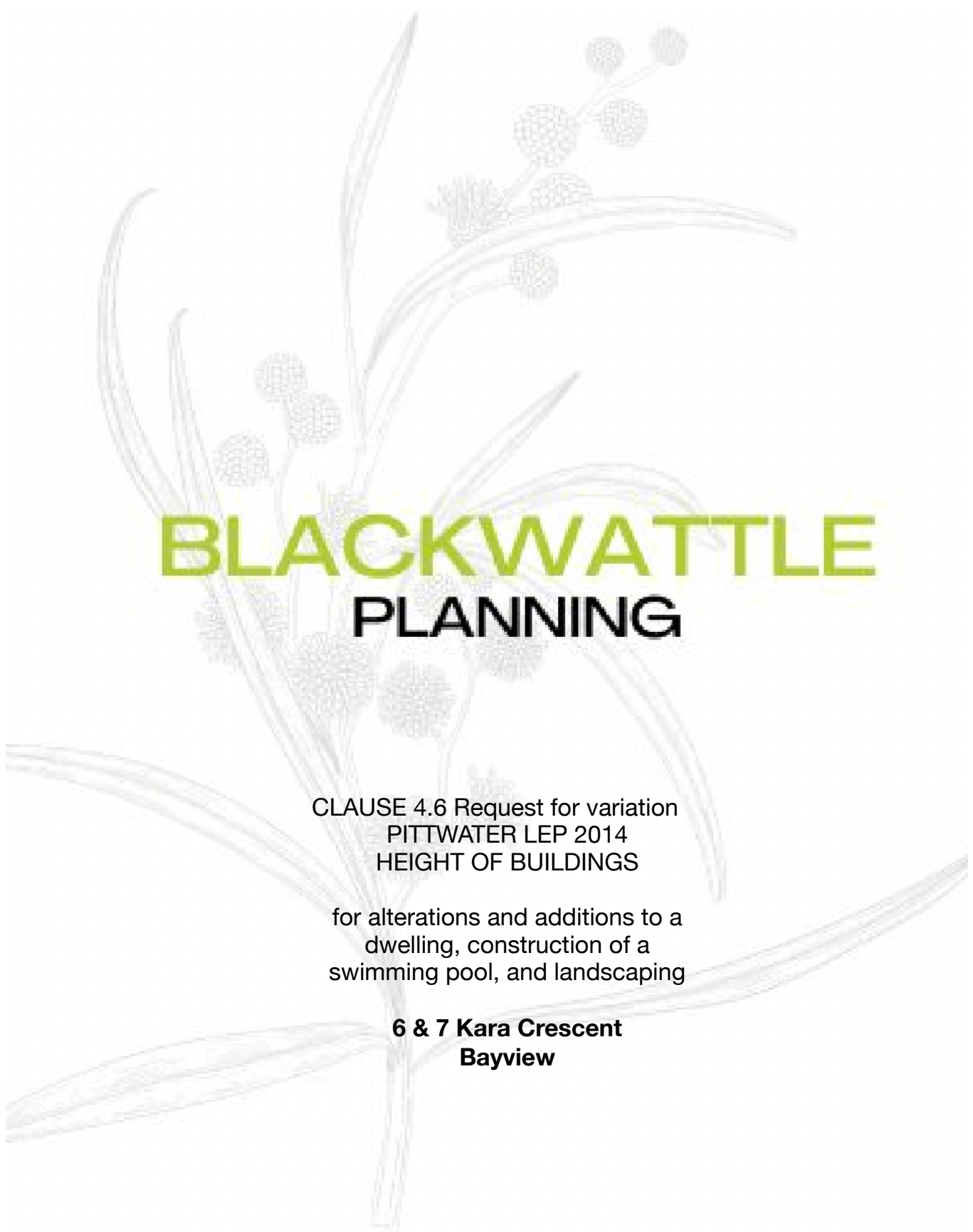
campbell architecture
75 Renwick Street Alexandria NSW 2015
t/ +61 02 7903 5266
e/ info@campbellarchitecture.com.au
ABN 48 616 525 449
NOM REG NO. 8324

elevation south & west
6 & 7 kara crescent
bayview

DA 07
1:200
2111
last modified : 23.05.15
filename : 2111_20_230512_DA.plt

**campbell
architecture**





BLACKWATTLE PLANNING

CLAUSE 4.6 Request for variation
PITTWATER LEP 2014
HEIGHT OF BUILDINGS

for alterations and additions to a
dwelling, construction of a
swimming pool, and landscaping

**6 & 7 Kara Crescent
Bayview**

Content

- 1.0 Introduction
- 2.0 Pittwater Local Environmental Plan 2014
- 3.0 Variation to Clause 4.3 Height of buildings
- 4.0 Clause 4.6 Exceptions to Development Standards
- 5.0 Conclusion

Figures

- Figure 1 Zoning Map Pittwater LEP 2014
- Figure 2 Height of Buildings Map Pittwater LEP 2014
- Figure 3 Height blanket demonstrating extent of non-compliance
- Figure 4 Excerpt Plan 02
- Figure 5 Photos rock outcrop within existing footprint

Reproduction of this document or any part thereof is not permitted without prior written permission of Blackwattle Planning Pty Ltd.

1.0 Introduction

This Clause 4.6 Request for Variation to the Height of Buildings development standard under Pittwater Local Environmental Plan 2014 (PLEP 2014) is prepared by Blackwattle Planning in support of a Development Application for alterations and additions to a dwelling, construction of a swimming pool, and landscaping at 6 & 7 Kara Crescent Bayview Heights to be submitted to Northern Beaches Council.

The Development Application includes the following components:

Level 0

- Excavate and retain landform to create new lift space
- Relocate stair
- Various changes to openings
- Reconfiguration of floor space to create new gym facilities
- New brick columns to replace existing
- Convert existing swimming pool to water tank and landscape over

Level 1

- Construct new wing comprising entry and foyer, leading to new living, kitchen and dining areas to north west of existing structure
- New terrace and pergola structures to east and west of new wing
- Reconfigure internal walls and openings of existing structure to create new study 1 and bed 1 and lift access within existing floor space
- Construct study 2 within the existing entry area
- Relocate internal stair access
- Remove existing awnings over existing terraces
- Demolish existing shed, extend and join existing driveway
- Construct porte cochère
- Construct new swimming pool, associated facilities, and adjoining lawn and landscaping
- Construct new cloister garden and Loggia

Level 2

- Demolish existing high pitched roof, dormers , and internal walls
- Construct new flat roof and parapet over level below, solar panels, and new metal pitched roof over bath 1 below
- Construct new planter to eastern elevation at this level adjoining pergola. Extend floor space over southern end and central area of footprint, including partially over new northern wing, to provide 4 bedrooms and 4 bathrooms
- Extend lift access to this level, including to central pergola area and new terrace 4 over Level 1
- Construct new metal roof over at reduced pitch

This document should be read in conjunction with the Statement of Environmental Effects prepared by Blackwattle Planning.

Through this document it is demonstrated that compliance with the Height of Buildings Development Standard of PLEP 2014 is unreasonable and unnecessary in the circumstances of this case and that there are sufficient environmental planning grounds to justify the contravention of the development standard.

2.0 Pittwater LEP 2014

The site comprises No.s 6 & 7 Kara Crescent, Bayview. No. 6 Kara Crescent forms the northern portion of the development site and has previously supported a dwelling which has recently been demolished. No. 7 Kara Crescent adjoins directly to the south. This portion of the site currently accommodates a dwelling over three levels, swimming pool, tennis court and minor outbuildings within a formal lawn and landscaped setting.

Together the two lots form a development parcel of 8594sqm, accessed from the cul de sac turning circle of Kara Crescent.

Under **Clause 2.2** of PLEP 2014, the site has a split zoning of part C4 Environmental Living and part R5 Large Lot Residential as shown in Figure 1 below. The works to construct alterations and additions to the dwelling on No. 7 Kara Crescent is located wholly on that portion of the land zoned R5 Large Lot Residential.

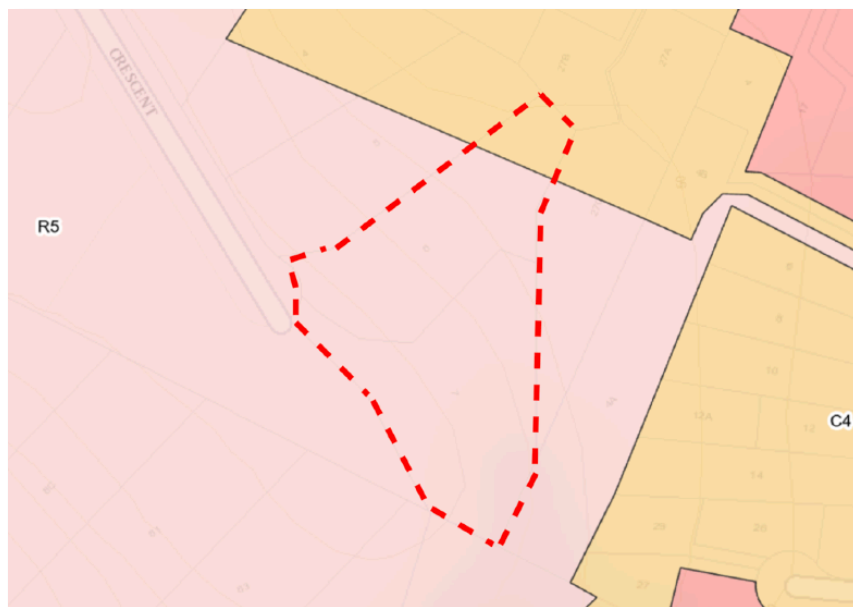


Figure 1: PLEP 2014 Zoning map showing the split zoning of the site within both the R5 Large Lot Residential and the C4 Environmental Living Zones
Source: NSW Planning Portal

Clause 4.3 of PLEP 2014 restricts the height of development on the site in accordance with the Height of buildings Map (at Figure 2 below) to 8.5m. Clause 4.3 is a development standard.



Figure 2: The site outlined in red on map indicating Category I, 8.5m Height limit,
Source: NSW Planning Portal

Clause 4.6 of PLEP 2014 enables the consent authority to grant consent to development even though the development does not comply with a development standard. The purpose of the Clause is to allow flexibility in the application of certain development standards which may in turn result in better outcomes.

3.0 Variation to Clause 4.3 Height of buildings

This written request seeks to justify the variation to Clause 4.3 Height of buildings development standard in PLEP 2014.

PLEP 2014 defines building height as follows:

building height (or **height of building**) means—
(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or
(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

The maximum height achieved by the proposed new additions at Level 2 is 10.44m. The variation to the 8.5m Height of buildings development standard sought is 22%. This calculation has utilised the interpretation of **building height** as outlined in *Merman Investments Pty Ltd v Woollahra Municipal Council 2021*.

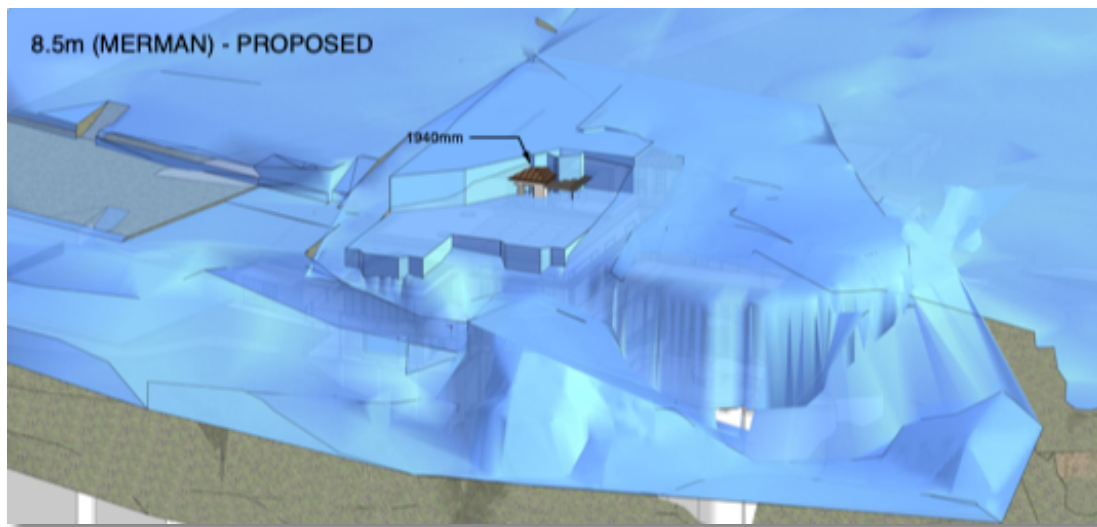


Figure 3: Plan showing extent of height breach under *Merman Investments* interpretation of **building height**. **Source:** Campbell Architecture

4.0 Clause 4.6 Exceptions to Development standards

The objectives of Clause 4.6 are set out in subclause (1) 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.*

Decisions of the NSW Land and Environment Court have established that Clause 4.6(1) is not an operational clause.

Clause 4.6(2) is the enabling clause that permits development consent to be granted to a development that contravenes a development standard imposed by PLEP 2014. As the Height of Buildings is a development standard and is not expressly excluded from the operation of the clause, a variation may be granted, subject to the remaining subclauses of Clause 4.6 being satisfied.

4.1 Clause 4.6(3) of PLEP 2014 provides that:

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

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

This written request addresses these requirements in turn, having regard for relevant key decisions of the NSW Land and Environment Court that have informed the approach to the application of Clause 4.6

4.2 Clause 4.6(3)(a) demonstrating that ***compliance with the development standard is unreasonable or unnecessary in the circumstances of the case***

The decision in *Wehbe v Pittwater Council 2007* establishes five ways that an applicant may commonly demonstrate that this clause is achieved. The decision also establishes that it may be sufficient to establish only one way.

The first of those pathways is to demonstrate that *the objectives of the development standard are achieved notwithstanding non-compliance with the standard*. This request relies on this pathway.

The objectives of the Height of Buildings development standard are set out below, together with a discussion of how the objectives are met by the proposal, notwithstanding the variation to the standard.

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

The site is located within the Bayview Heights. Pittwater 21 DCP provides a locality statement setting out the desired character of the locality. Parts of the statement relevant to a single dwelling are as follows:

Desired Character

The Bayview Heights locality will remain a low-density rural residential area with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape.

...

Care will need to be taken with future developments to ensure that outbuildings and ancillary recreational structures do not dominate the natural landscape and bushland setting.

Future development will maintain a building height limit below the tree canopy, and minimise bulk and scale. Such development will need to consider its impact upon the slope of the land both from a hazard point of view (landslip & bushfires) and visually, especially when viewed from outside the locality such as the Pittwater waterway and Mona Vale valley.

Existing and new native vegetation, including canopy trees, will be integrated with the development. Development shall maintain generous spatial separation of the built form and low site coverage on large lots. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandas and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards.

A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, and to enhance wildlife corridors. Fencing where provided, shall enable the native fauna to pass through yet contain livestock animals where needed.

Comment: The desired character is well met by the design proposed noting the reduction in density arising from developing only one dwelling over the 2 allotments. The distribution of structure within the building footprint brings the existing dwelling into greater consistency with the requirements to *step down the slope* with roof forms at higher RL's being located centrally as far as possible from boundaries.

An outbuilding is removed by the design, and the footprints of two dwellings reduced and consolidated into one, and positioned over the already disturbed area of the land.

Significant mature canopy on the site is almost entirely retained, providing a scale and backdrop which ensures the built structures remain secondary to the bushland context.

The dwelling is predominantly two storeys and the existing high pitched roof forms replaced with low parapets and low profile hipped forms to reduce apparent scale.

With the reduction in density and consolidation of building footprint, substantial setbacks are created to other allotments and dwellings and the overall landscape area of the site is significantly increased.

The exposure of the site at the elevated location results in the need for appropriate protection in the form of pergolas and covered recreation spaces at both levels. The design increases the overall modulation of the existing dwelling and uses contemporary forms which simplify the design.

The existing canopy is recognised as a significant asset on the site and is almost entirely retained. The footprint of the new wing extends over areas already disturbed and formally landscaped, reducing any impact upon the extensive rock outcropping and substantial sandstone boulders which are a feature of the site.

Overall, the new design will sit comfortably and less obtrusively in the bushland setting.

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

Comment: Being on large lots, dwellings in the immediate locality of Kara Crescent are generally constructed over larger footprints and maintain two storey forms. The proposed dwelling is entirely consistent with this character. The third level of the existing dwelling in the form of the easterly pitched gables is largely removed from the design in favour of floor space set back into the site where it retains only a two storey presentation.

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

Comment: Shading of neighbours is minimal because of the optimal orientation of the dwelling, its reduced overall height at its eastern edge, and the extensive spatial separation arising from the larger lot area. Shadow diagrams demonstrate that no additional shadow impacts upon neighbours are created by the proposed works.

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

Comment: The generous setbacks, combining of allotments, and general location of the site at the apex of the cul de sac mean that the dwelling will not interrupt view lines to the panoramic views obtained. The orientation of No. 5 Kara Crescent is predominantly towards the northern and western views over the Pittwater waterway, the Newport and Bilgola escarpment and towards the Central Coast. Visually, the closest remaining neighbour is No. 8 Kara Crescent which is oriented towards the south away from the development site and well separated spatially. The dwelling on this site is recently demolished.

The orientation of allotments, generous spatial separation, and the form of the land and canopy mean that there is limited visibility of either the existing or proposed dwelling on the site from either adjoining neighbours or the public domain.

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

Comment: The redistribution of floor area and structure from the eastern portion of the existing dwelling to above the western and central parts of the footprint brings a greater stepped result and responds appropriately to the sudden level changes under the existing building.

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

Comment: Increased stepping in the proposed building form reduces the visual presentation of the building as viewed from key vantage points in the surrounding local area. The retention of canopy, concentration of built form in a single location over the two lots, and increased area for landscaping provide a significantly improved outcome in relation to visual impacts relative to the natural environment.

4.2.7 Conclusion under Clause 4.6 (3)(a)

Having regard to the consistency of the proposed development with the objectives of the Height of Buildings development standard, compliance with the standard is found to be unreasonable and unnecessary in the circumstances.

4.3 **Clause 4.6(3)(b) demonstrating that *there are sufficient environmental planning grounds to justify contravening the standard***

Clause 4.6(3)(b) requires that *sufficient environmental planning grounds* be demonstrated to justify contravening the development standard. As established in relevant caselaw, the sufficient grounds must relate to the circumstances of the proposed development and focus on the relevant aspect of the development that contravenes the standard.

In this case, that part of the proposal which exceeds the development standard is the small portion of structure of level 2, being bed 3 and the pergola structure proposed over the adjoining terrace.

The environmental planning grounds that justify the exceedance of the development standard are as follows:

Level change within footprint

- The breaching part of the structure extends over a sudden level change at the ground levels under the building directly beneath this point. Plan level 0 (shown on DA02 below) plots the existing and proposed lower level floor space extending beyond the rock edge. At this point, the structure is built around an existing boulder which indicates the ground level change through the building footprint. An excerpt of Plan DA02, and photos of the rock boulder at that level are shown below:

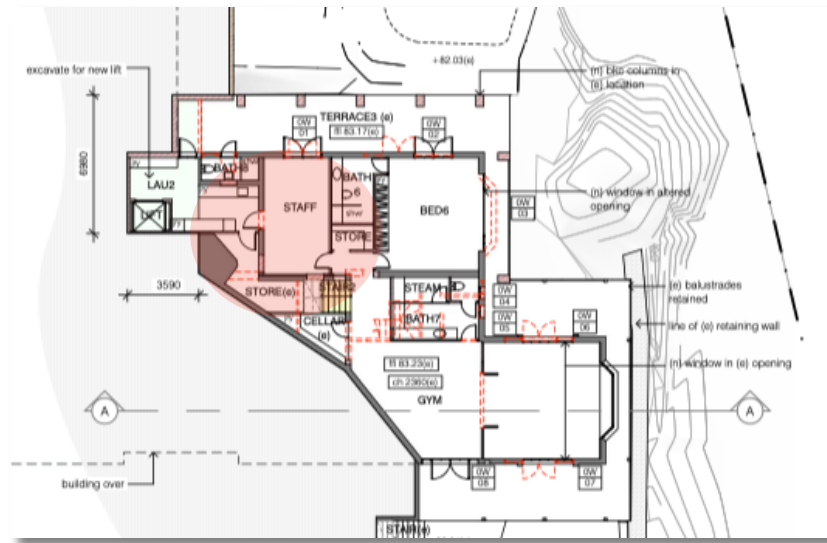


Figure 4: The red circle indicates the area where bed 3 and the adjoining pergola extend beyond the rock formation creating the sudden level change in ground line. **Source:** Plan 02 excerpt Campbell Architecture, annotated by Blackwattle Planning.

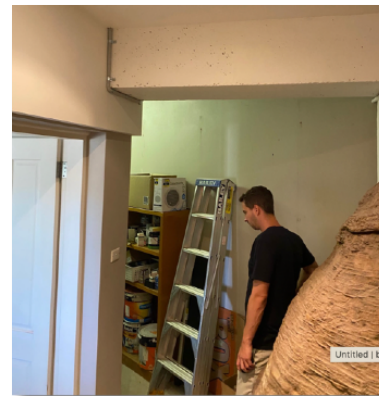


Figure 5: Rock outcropping at the level change within the building footprint immediately below the location of Bed 3 and pergola above **Source:** Campbell Architecture

Isolated exceedance

- The exceedance is isolated to the portion of level 2 that extends beyond the level change. This part of the structure sits in the context of the remaining floor space at level 2 which is fully complying. The location of the breach, surrounded and below the complying remainder of level 2 means that the breach of the height of buildings development standard will not be perceived as such. The level change under the building is not evident externally, and Bed 3 and the adjoining pergola will read as integrated into the remaining, two storey and otherwise compliant dwelling.

Absence of impact

- Following on from the above argument, and noting the large lot context of this site and its immediate locality, the breaching element (which is lower than other compliant parts of the roofline) will cause no impact. The height exceedance sits centrally within the existing building footprint and will cause no overshadowing, privacy or view impact. As complying and taller elements of level 2 occur immediately to the west of Bed 3 and pergola above the higher ground line, the breaching element creates no additional scale as viewed from anywhere in the locality.
- To require the removal of Bed 3 and the pergola would serve no meaningful purpose given the absence of impact.

Improved compliance when compared to existing

- The removal of structure at the eastern edge of the dwelling and distribution of floor space to above the central and western part of the footprint greatly increases the level of compliance with the 8.5m height limit, and successfully steps the building in line with the slope of the land.
- Importantly, this design assists in recessing the higher elements of the structure to ensure they are less prominent on the ridgeline. The extent to which compliance with the height limit is improved by the proposal is best demonstrated by comparison of the height blanket diagrams below:

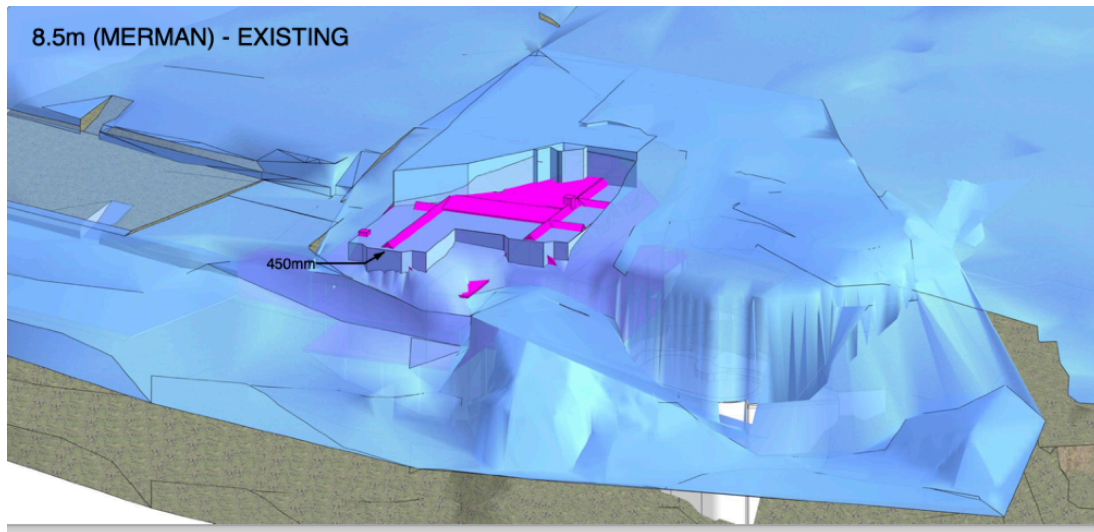


Figure 14: Non-compliance with 8.5m height limit of existing building
Source: Campbell Architecture

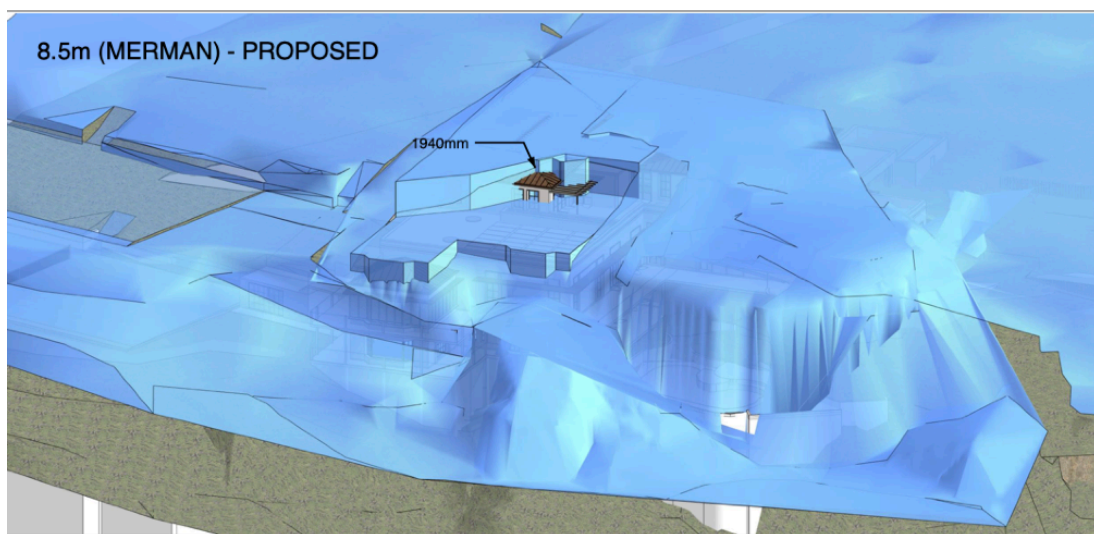


Figure 15: Reduced extent of non-compliance with 8.5m height limit of proposed building
Source: Campbell Architecture

4.3.1 Objects of the Environmental Planning and Assessment Act

In demonstrating sufficient environmental planning grounds, it is noted that notwithstanding the contravention of the maximum height standard, the design fulfils the following objects of the Environmental Planning and Assessment Act 1979:

(g) to promote good design and amenity of the built environment,

The proposed changes and additions to the existing dwelling comprise a substantial improvement to the responsiveness of the dwelling to the natural landform. The redistribution of floor space to the west to step down the landform, together with more discreet parapet and hipped roof forms is a positive design contribution to the overall presentation of the dwelling. Increased amenity will arise from the substantial return of land to landscape on the combined site.

(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment.

An improved functionality, aesthetic, and response to the environmentally sensitive ridgeline location results in an overall increase in ecologically sustainability for this site.

4.3.2 Conclusion under Clause 4.6(3)(b)

We believe the above environmental planning grounds are sufficient to justify the exceedance of the height of buildings development standard in these specific circumstances.

4.4 **Clause 4.6(4)(a)(i) The written request *adequately addresses the matters required to be demonstrated by subclause (3)***

This written request comprehensively addresses the matters required to be demonstrated by subclause (3).

4.5 **Clause 4.6(4)(a)(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***

4.5.1 Consistency with objectives of development standard

As outlined in paragraphs 4.2 of this document, the proposed development notwithstanding the exceedance of the height limit is found to be consistent with the objectives of the Height of buildings development standard.

4.5.2 Consistency with objectives of the Zone

The objectives the **C4 Environmental Living Zone** are met by the proposed development as follows:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values; and*
- *To ensure that residential development does not have an adverse effect on those values.*

The demolition of a previous dwelling at No. 6 Kara Crescent and a combining of the lots to form a single development site supporting just one dwelling will clearly minimise visual impacts upon neighbouring dwellings and upon the scenic visual catchment within which the site sits. The decision to combine the two allotments and to retain substantial existing structure on No. 7 Kara Crescent reduces the already low impact circumstances and provides a unique opportunity to enhance the special visual and biodiversity values of the site.

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

The removal of significant structure from the eastern projecting portion of the existing dwelling substantially reduces the presentation of scale on this site, which has a wide catchment in its elevated position. The retention of vegetation in both the eastern and northern foreground and the backdrop of considerable mature canopy means the proposed extended dwelling retains a highly vegetated context. In particular canopy trees to the northwest of the site provide significant scale which ensure the proposal remains secondary to the bushland setting.

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

The increased landscaped area that arises from the demolished dwelling on No. 6 Kara Crescent, together with the concentration of built form within already disturbed areas of the site allows the habitat value of the combined site to be significantly enhanced.

The objectives of the **R5 Large Lot Residential Zone** are met by the proposed development as follows:

- *To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.*

The increased opportunity for native landscaping on the site is captured by this proposal and structure is concentrated and located centrally on the site. The scale of the dwelling is reduced at its most prominent edge, and needed floor space occupies the footprint of existing structure of the current formalised garden curtilage.

- *To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.*

The single dwelling over two allotments provides the adjoining land additional spatial separation which reduces already minimal amenity impacts in the immediate locality. The site and proposed design will be less obtrusive in the landscape and recessive as viewed from nearby foreshore areas. The surrounding urban areas will benefit from the dwelling being less prominent in the landscape and well integrated with the surrounding canopy.

- *To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.*

No such increase in demand for public services or facilities will arise from the proposed development.

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

The site has a split zone at its northern corner and currently transitions from the R5 Large Lot Residential Zone to the C4 Environmental Living Zone along its eastern and northern edge. The additional spatial separation provided by the combining of the lots enhances this transition and respects the increased sensitivity of the ridgeline location of the existing dwelling.

- *To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.*

No other land uses are proposed, and the additional spatial separation between development can only benefit any such uses proposed on adjoining lots into the future.

4.6 Clause 4.6(4)(b) The concurrence of the Planning Secretary has been obtained

Concurrence is obtained from the Secretary of the Department of Planning in these circumstances through Planning Circular dated 5 May 2020 which established concurrence can be assumed for variations exceeding 10% where a Local Planning Panel is the Consent authority. Advice from the DPIE dated 2 November 2021 permits Clause 4.6 variations greater than 10% to building height to be determined by Council staff under delegation in accordance with Council procedures.

5.0 Conclusion

This document demonstrates that the required tests contained in Clause 4.6 have been met by the proposed development. In particular, that:

- Compliance with the Height of Buildings development standard is unreasonable and unnecessary in the circumstances of the case given that the objectives of Clause 4.3 Height of Buildings have been met; and,
- Sufficient environmental planning grounds have been demonstrated to justify the contravention of the development standard; and,

- The proposed development is found to be in the public interest given its consistency with the objectives of the development standard and objectives of both the C4 Environmental Living zone and R5 Large Lot Residential Zone.

In these circumstances the consent authority can be satisfied that it is appropriate to apply the flexibility permitted under Clause 4.6 of PLEP 2014 to vary the Height of Buildings development standard of PLEP 2014 to the extent proposed.



Anna Williams
BTP (Hons) UNSW
B Ec (Soc Sc) USYD

Director
BLACKWATTLE PLANNING
E: anna@blackwattleplanning.com.au
M: 0418622598

ITEM 3.4	DA2023/1087 - 3 LANTANA AVENUE WHEELER HEIGHTS - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Steve Findlay
TRIM FILE REF	2023/709268
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations 3 ↓ Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of WLEP 2011 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2023/1087 for alterations and additions to a dwelling house on land at Lot B DP 395548, 3 Lantana Avenue WHEELER HEIGHTS, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/1087
Responsible Officer:	Nick Keeler
Land to be developed (Address):	Lot B DP 395548, 3 Lantana Avenue WHEELER HEIGHTS NSW 2097
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Mark Iain Anderson Julie Anne Anderson
Applicant:	Cradle Design
Application Lodged:	14/08/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	21/08/2023 to 04/09/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 20.4%
Recommendation:	Approval
Estimated Cost of Works:	\$ 642,066.00

EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) due to a departure from the height of buildings development standard by more than 10%. The maximum height of the proposed development has been measured at 10.23m, which represents a variation of 20.4% to the prescribed 8.5m building height limit.

The clause 4.6 request for the non-compliance with the building height standard arises from the

sloping nature of the site towards the north-west and the existing excavation beneath the dwelling, based on the height measurement under the relevant LEC caselaw known as *Merman*. Based on extrapolated natural ground levels under the LEC caselaw known as *Bettar*, the height of the first floor addition would be below the 8.5m height limit. The Clause 4.6 variation request in relation to building height is well founded and is supported.

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

Overall, it is considered that the proposal has been designed appropriately to remain compatible with the prevailing built form of the locality and will not cause unreasonable impact to the amenity of adjacent properties, including solar access, privacy and view sharing. The proposed additions retain the low density residential character, while being built primarily upon the existing footprint and not resulting in the removal of any significant vegetation or require alteration to the landform.

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

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for alterations and additions to the existing dwelling including construction of a first floor addition.

The proposed works include the following:

- Reconfiguration of the ground floor and basement layout
- Reconfiguration to the dwelling entry
- Construction of a first floor addition

The proposed works are confined within the footprint of the existing building.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings

Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting

SITE DESCRIPTION

Property Description:	Lot B DP 395548 , 3 Lantana Avenue WHEELER HEIGHTS NSW 2097
Detailed Site Description:	The subject site consists of one (1) allotment located on the southern side of Lantana Avenue. The site is regular in shape with a frontage of 21.335m along Lantana Avenue and a depth of 27.43m. The site has a surveyed area of 585.2m². The site is located within the R2 Low Density Residential zone and accommodates a part one and two storey residential dwelling house and a hardstand parking area at the front. The site falls approx. 2m from the southeast towards the northwest. The site contains grass and garden areas at the front and rear of the dwelling. The rear yard contains some large trees and hedging vegetation along the eastern boundary. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by low density residential dwellings. The RSL Anzac Village ("The War Vets") retirement village is located opposite the site to the north.

Map:



SITE HISTORY

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

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	These matters have been addressed via a condition of consent. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended architectural plans to indicate the correct building height. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 21/08/2023 to 04/09/2023 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
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	The proposal has been referred to Heritage as the subject site is opposite another site containing a heritage item
	I30 ANZAC War Memorial - Veterans Parade, Wheeler Heights
	Details of heritage items affected
	<u>Statement of Significance</u> This memorial has local historical, social and aesthetic significance both as an individual war memorial and due to its association with the War Veterans Village. Typical example of sculptured bas-relief monuments erected during this period.
	<u>Physical Description</u> Stone mural of dressed ashlar sandstone with stepped plinth and straight edged capping. Recessed centre panel features bas-relief sculpture of armed ANZAC soldiers.
	<u>Other relevant heritage listings</u>
	SEPP (Biodiversity and Conservation) 2021
	Australian Heritage Register
	NSW State Heritage Register

Internal Referral Body	Comments
	National Trust of Aust (NSW) Register
	RAIA Register of 20th Century Buildings of Significance
	Other
	Consideration of Application
	The proposal seeks consent for alterations and additions to a dwelling. The site is located opposite a site containing a heritage item however the item itself is located at some distance away facing the roundabout where Veterans Parade meets Edgecliffe Boulevard. Given this physical separation, the proposal is considered to not impact upon the heritage item or its significance. Therefore Heritage raises no objections and requires no conditions. Consider against the provisions of CL5.10 of WLEP. Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No
External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A501165, dated 18/07/2023). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objections.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
----------	-------------	----------	-------------	----------

Height of Buildings:	8.5m	10.23m	20.4%	No
----------------------	------	--------	-------	----

Compliance Assessment

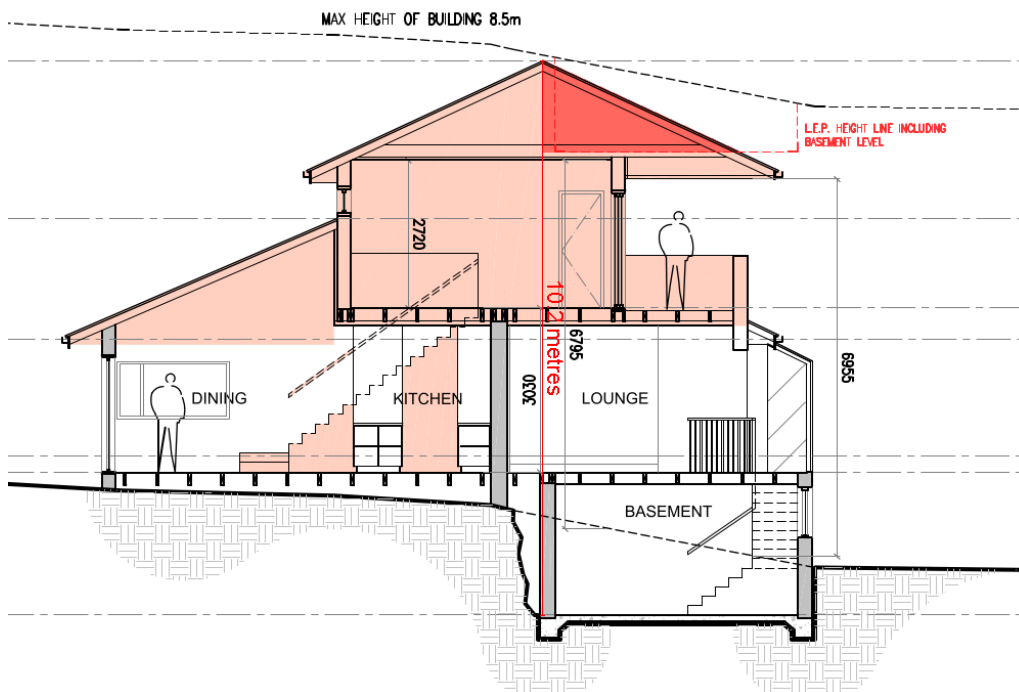
Clause	Compliance with Requirements
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	10.23m
Percentage variation to requirement:	20.4%



Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

(a) *the consent authority is satisfied that:*

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

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

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

- (a) *that compliance with the development standard is unreasonable or unnecessary in the*

circumstances of the case, and

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- *Despite the proposed development's non-compliance with the applicable height development standard, the proposal achieves the desired character of the area.*

- *The proposal provides a height, bulk and scale that is generally consistent with that envisaged by Council's controls.*
- *The new roofing which breaches the height limit follows the roof forms of the existing building and locality.*
- *The proposal will maintain solar access to private open spaces and to the habitable room windows of adjacent dwellings in accordance with the DCP requirements.*
- *There is no impact to any coastal or bush environments.*
- *New case law has pushed the roof over the 8.5m height control, which prior would have been sitting under the 8.5m height control.*

The applicant has satisfactorily demonstrated that the works are consistent with the objects of the EP&A Act for the following reasons:

- The building height is artificially accentuated due to the existing area of excavation relative to the prevailing slope of the site and surrounds.
- The proposed development generally maintains the pattern of the neighbourhood including predominant heights.
- The development promotes good design and amenity of the built environment, noting that the dwelling house integrates and works with the sloping topography of the property while maintaining suitable amenity for adjoining properties.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

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

2011 are:

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

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

Comment:

The dwelling will present to the street at a two-storey building. As such, the proposed development is considered to be reasonably compatible with the height and scale of existing dwellings in the locality.

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

Comment:

The proposed development will not cause unreasonable visual impact, disruption of views, loss of privacy and loss of solar access enjoyed by adjacent and nearby dwellings. The dwelling is appropriately setback and articulated to modulate the upper level bulk and limit its impacts on adjacent properties and the public domain.

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

Comment:

The scenic quality of the locality is not expected to be unreasonably impacted as a result of the proposed development.

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

Comment:

As outlined, the proposed development is designed in a manner to limit the overall building bulk and massing. Setback variations of the first floor addition and facade articulation assists in mitigating the visual impact of the development when viewed from the public domain.

Zone objectives

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

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

Comment:

The proposed development maintains the low density residential land use of the site and provides a more modern and functional dwelling for occupants.

It is considered that the development satisfies this objective.

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

Comment:

The proposal does not alter the existing residential land use of the site.

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

Comment:

The proposed development generally maintains the existing building footprint and retains significant vegetation and trees on the site. I

It is considered that the development satisfies this objective.

Conclusion:

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

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

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

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

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation	Complies
B1 Wall height	E - 7.2m	6.4m	N/A	Yes
	W - 7.2m	7.2m	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	GF - 2.59m	N/A	Yes
		FF - 4.72m	N/A	Yes
	W - 0.9m	GF - 0.74m	Existing	As existing
		FF - 2.17m	N/A	Yes
B7 Front Boundary Setbacks	6.5m	GF - 6.5m	N/A	Yes
		FF - 9.2m	N/A	Yes
B9 Rear Boundary Setbacks	6m	GF - 6.3m	N/A	Yes
		FF - 10.6m	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (234.1m ²)	37.5% (219.5m ²)	Existing	As existing

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	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

D1 Landscaped Open Space and Bushland Setting

The control requires the minimum landscape open space (LOS) as being of 40% (234.1m²) of the site area with minimum dimensions of 2 metres.

The existing development on the site does not achieve required LOS (37.5%). The proposed development does not alter the existing LOS on the site.

As the built form is to be wholly within the existing building footprint, it is not considered that any existing landscaping on the site would be detrimentally impacted by the works. Therefore, it is considered the proposed development generally achieves consistency with the control objectives.

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 \$6,421 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$642,066.

CONCLUSION

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

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

- Codes and Policies of Council.

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

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

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

Council is satisfied that:

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

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

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

PLANNING CONCLUSION

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

The critical assessment issue is the variation to the permitted building height.

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

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment.

The proposal is referred to the DDP with a recommendation that the Panel support the Clause 4.6 variation and **APPROVE** the application.

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

RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2023/1087 for Alterations and additions to a dwelling house on land at Lot B DP 395548, 3 Lantana Avenue, WHEELER HEIGHTS, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA 01	B	Site Plan, Site Analysis & Calculations	Cradle Design	05/10/2023
DA 02	B	Existing & Demolition Ground & Basement	Cradle Design	05/10/2023
DA 03	B	Existing & Demolition Roof Plan	Cradle Design	05/10/2023
DA 08	B	Proposed Ground Floor & Basement Floor Plans	Cradle Design	05/10/2023
DA 09	B	Proposed First Floor Plan	Cradle Design	05/10/2023
DA 10	B	Roof Plan, Drainage, Site Management & Erosion Control Strategy	Cradle Design	05/10/2023
DA 11	C	Proposed North Elevation	Cradle Design	05/10/2023
DA 12	C	Proposed South Elevation	Cradle Design	05/10/2023

DA 13	C	Proposed East Elevation	Cradle Design	05/10/2023
DA 14	C	Proposed West Elevation	Cradle Design	05/10/2023
DA 15	C	Proposed Section A-A	Cradle Design	05/10/2023
DA 16	C	Proposed Section B-B	Cradle Design	05/10/2023
DA 20	B	Finishes Schedule	Cradle Design	05/10/2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate No. A501165	-	Cradle Design	18/07/2023
Waste Management Plan	-	Unnamed	Undated

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

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

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

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	17/08/2023

(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 beyond the definition of a *dwelling house*, in accordance with the Dictionary of the Warringah Local Environmental Plan 2011.

Any variation to the approved land use beyond the scope of the above definition will require the submission to Council of a new development application.

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

4. No Approval for Secondary Dwelling

No approval is granted or implied under this Development Consent for the use of any part of the dwelling house for the purpose of a secondary dwelling or separate occupancy. Built in cooking facilities are not permitted to be installed, other than those shown in the designated kitchen area.

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

5. 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.

6. 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

7. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$6,420.66 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 \$642,066.00.

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

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

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

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

8. Security Bond

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

adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

9. Stormwater Drainage Disposal

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

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

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

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

Reason: To ensure satisfactory management of stormwater.

10. Boundary Identification Survey

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

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

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

11. Installation and Maintenance of Sediment Control

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

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

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

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

12. Compliance with Standards

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

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

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

13. External Finishes to Roof

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

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

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

14. Sydney Water "Tap In"

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

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

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

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

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

DURING BUILDING WORK

15. Removing, Handling and Disposing of Asbestos

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998)];
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

16. 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. Waste Management During Development

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

18. Stormwater Drainage Disposal Certification

Certification from an appropriately qualified and practising Civil Engineer demonstrating the stormwater drainage systems have been designed and installed in accordance with the requirements of Council's Water Management for Development Policy and where relevant a Geotechnical Engineer shall be provided to the Principal Certifier prior to the issue of an Occupation Certificate, and;

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

The application is to include the completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy

of the approved drainage plan), hydraulic engineers' certification. A guide to the process and associated Legal Document Authorisation Application form can be found on Council's website. The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater detention system within this development consent.

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

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

Reason: To ensure satisfactory management of stormwater.

19. **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.

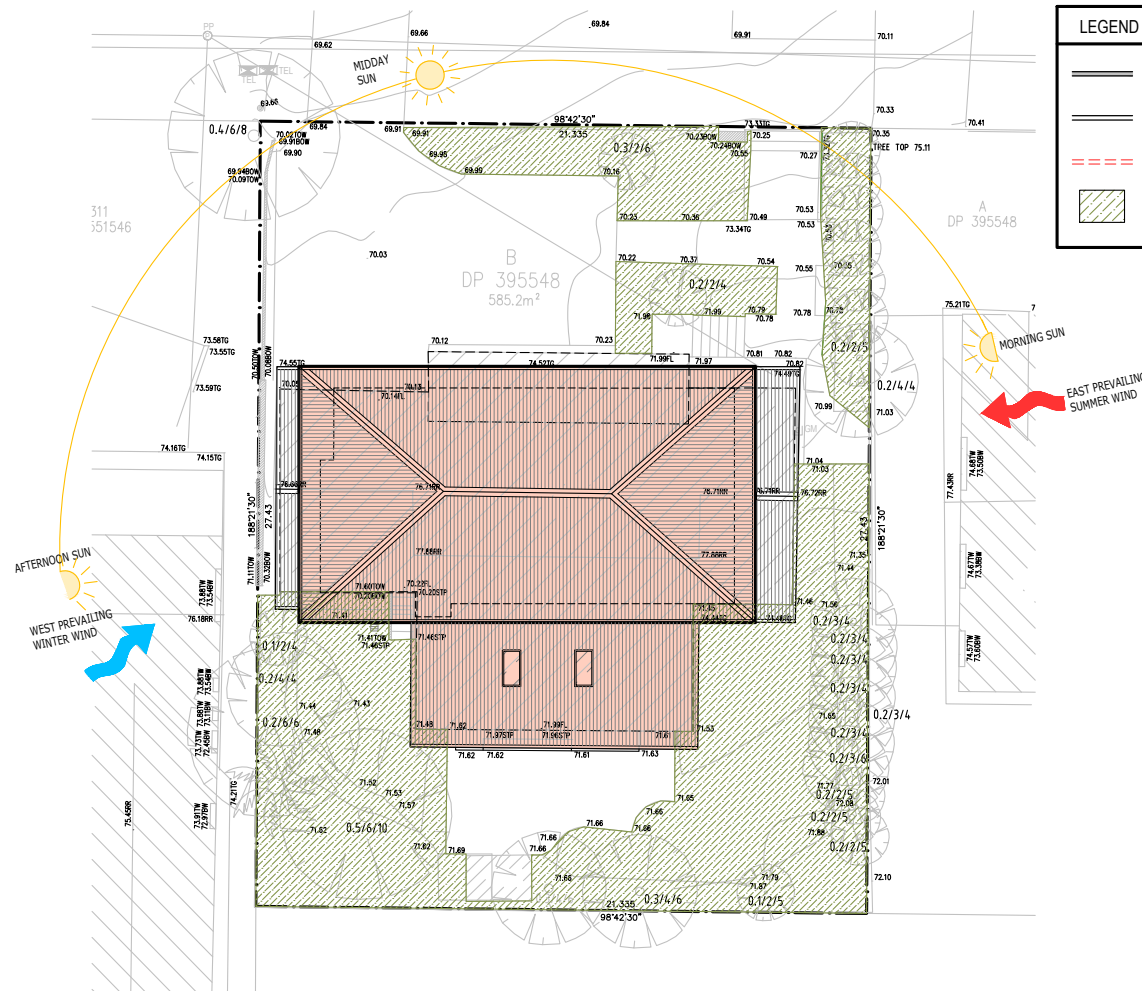
Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure bushland management.

20. **Waste Management Confirmation**

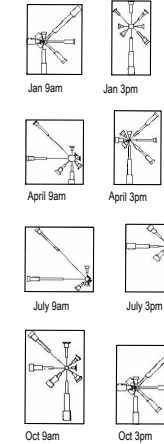
Prior to the issue of an Occupation Certificate, evidence / documentation must be submitted to the Principal Certifier that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with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

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



WIND ROSES

Sydney Airport AMO/AWS:
Source NSW Bureau of Meteorology



SITE COVERAGE CALCULATIONS		
	EXISTING	PROPOSED
SITE AREA	585.2m ²	NO CHANGE

LANDSCAPE OPEN AREA CALCULATIONS		
LANDSCAPING CONTROL = 40% OF 585.2m ² = 234.8m ²		
EXISTING LANDSCAPED AREA: 219.5m ²		
PROPOSED LANDSCAPED AREA: UNCHANGED		

PRIVATE OPEN SPACE CALCULATIONS		
PRIVATE OPEN SPACE CONTROL = TOTAL 60m ² with min. dimension of 5m		
REAR YARD: 219.5m ²		

FLOOR AREA CALCULATIONS		
	EXISTING	PROPOSED
GROSS FLOOR AREA (PRIMARY DWELLING)	Basement - 40.2m ²	Basement - 41.6m ²
	Ground Floor - 172.2m ²	Ground Floor - 162m ²
	First Floor - n/a	First Floor - 80.1m ²
	Total = 212.4m²	Total = 283.7m²

This drawing and design is subject to copyright and may not be reproduced without prior written consent. All dimensions to be verified and any discrepancies referred to Cradle Design prior to the commencement of any work. Use figured dimensions only.

STUDIO

Shop 1 | 316 Sydney Road
Balgowlah NSW 2083
c: 02 9029 9554
e: info@cradledesign.com.au
w: www.cradledesign.com

Nom: Architects:
Paul Lucas - 1776
Regan VanderWort-Walsh - 7804

cradle

ORIENTATION

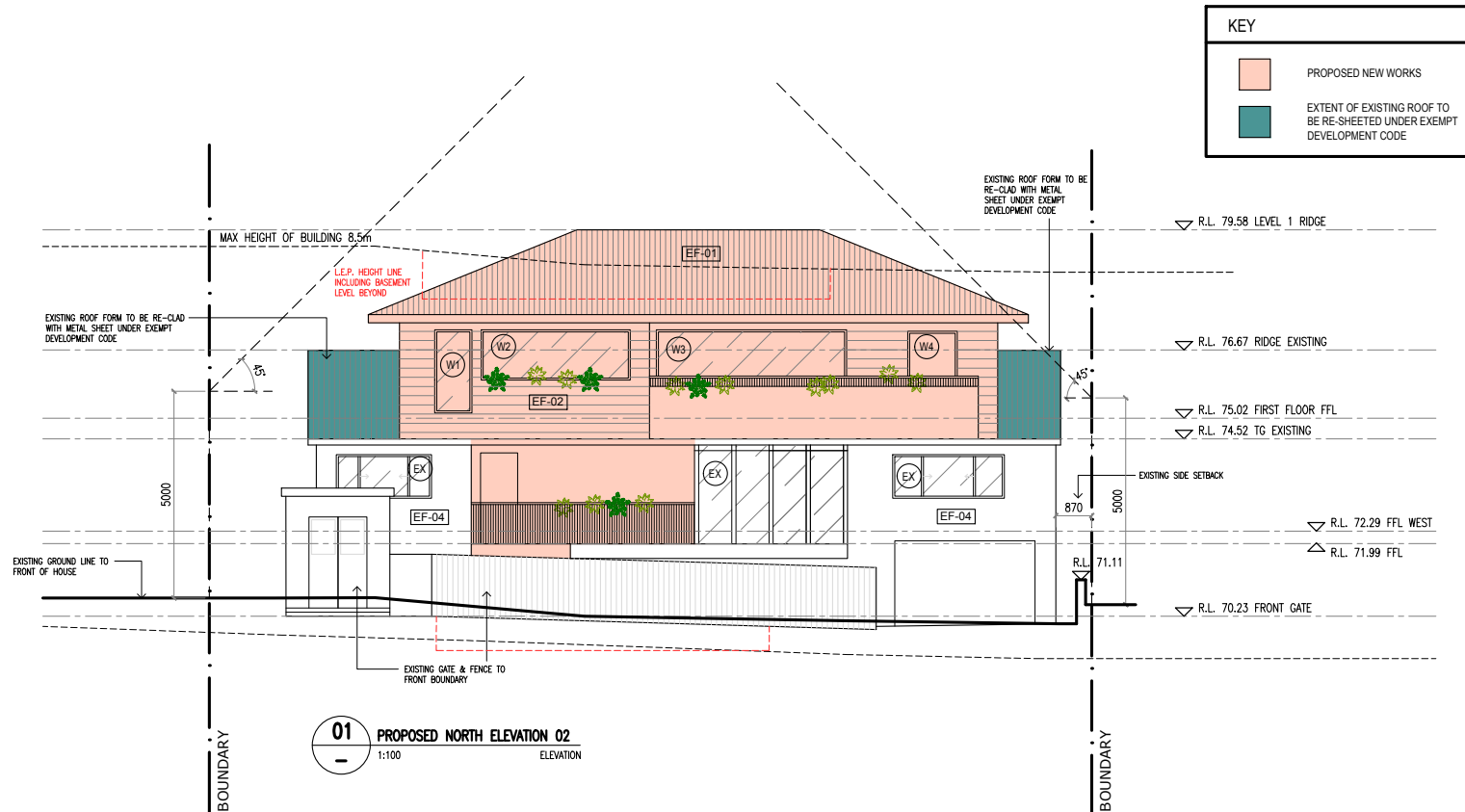
REVISION
REV A - 22.05.2023 - FOR DEVELOPMENT APPLICATION
REV B - 05.10.2023 - SCALING CLARIFICATIONS

DETAILS
CLIENT
MARK & JULIE ANDERSON

ADDRESS
3 LANTANA AVENUE,
WHEELER HEIGHTS NSW 2097

PROJECT
DRAWING TITLE
SITE PLAN, SITE ANALYSIS & CALCULATIONS
REFERENCE
#580_3 LANTANA AVE
SCALE **DRAWN**
1:150@A3 **RVW**
DA | 01 B
DRAWING ISSUE

FOR DEVELOPMENT APPLICATION



This drawing and design is subject to copyright and may not be reproduced without prior written consent. All dimensions to be verified and any discrepancies referred to Cradle Design prior to the commencement of any work. Use figured dimensions only.

STUDIO Shop 1 316 Sydney Road Balgovish NSW 2093 t: 02 9029 5552 e: info@cradledesign.com.au w: www.cradledesign.com Nom. Architects: Paul Lucas - 8766 Regan VanderWort-Walsh - 7804	cradle	ORIENTATION
---	----------------------	---------------------------

REVISION

REV A - 22.05.23 - FOR DEVELOPMENT APPLICATION
REV B - 31.08.23 - CLAUSE 4.6 - HEIGHTS RESPONSE
REV C - 05.10.23 - SCALING CLARIFICATIONS

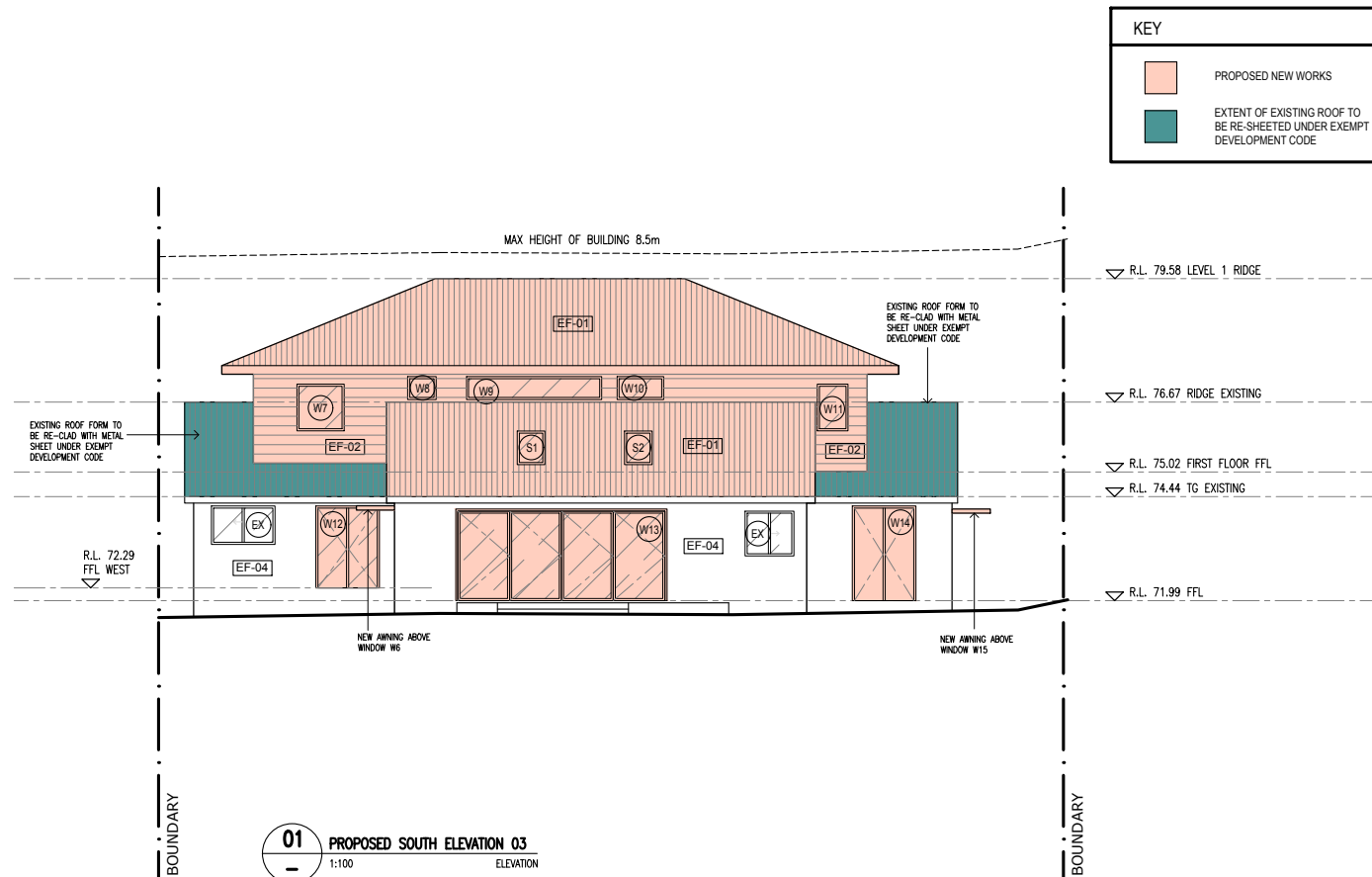
DETAILS

CLIENT
MARK & JULIE ANDERSON

ADDRESS
3 LANTANA AVENUE,
WHEELER HEIGHTS NSW 2097

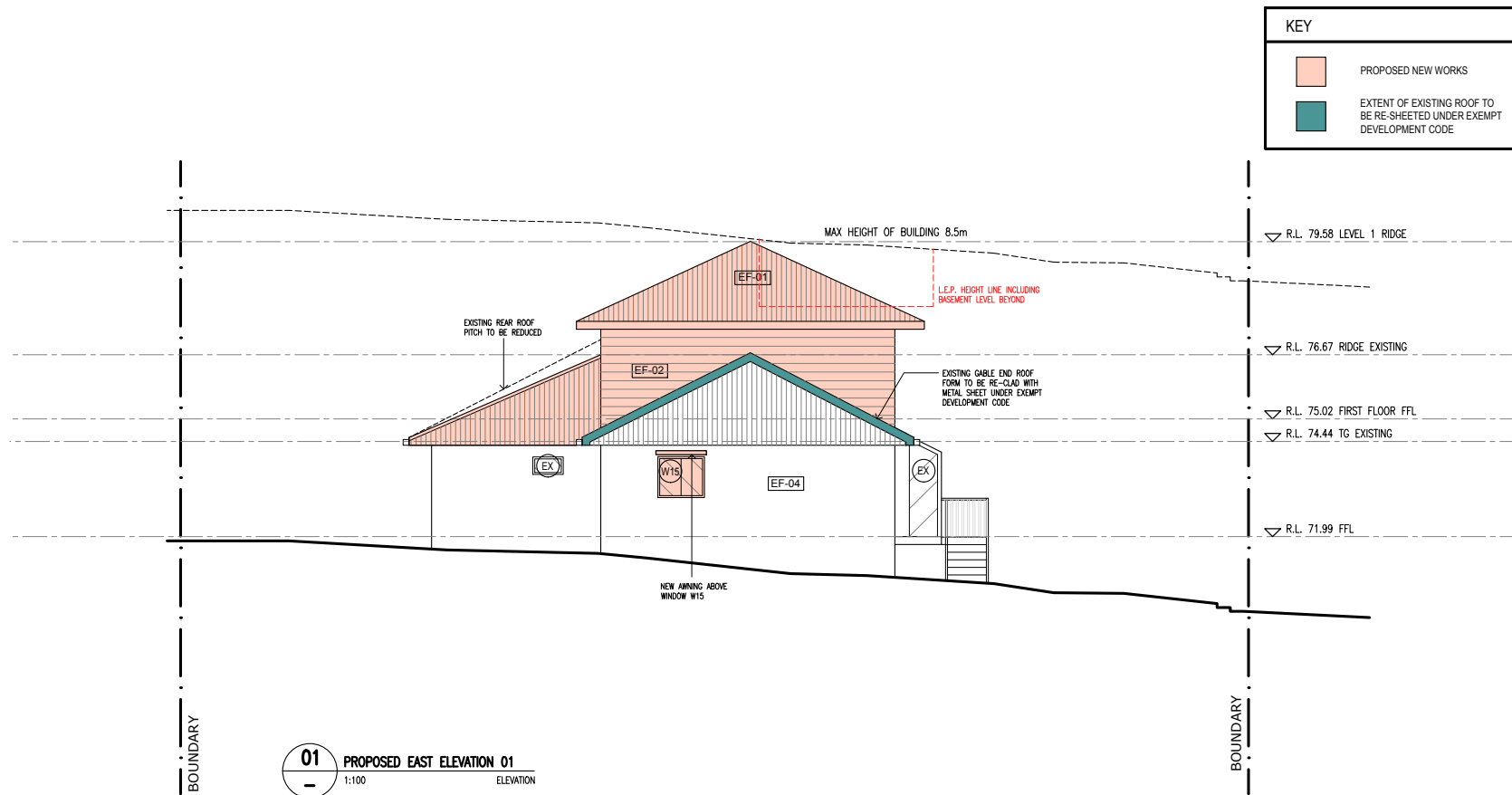
FOR DEVELOPMENT APPLICATION

PROJECT DRAWING TITLE PROPOSED NORTH ELEVATION REFERENCE #580_3 LANTANA AVE SCALE DRAWN 1:100@A3 RVW	DA 11 C DRAWING ISSUE
---	---



This drawing and design is subject to copyright and may not be reproduced without prior written consent. All dimensions to be verified and any discrepancies referred to Cradle Design prior to the commencement of any work. Use figured dimensions only.

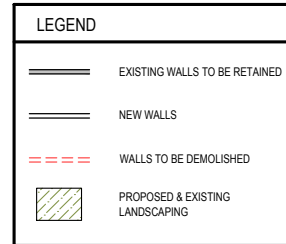
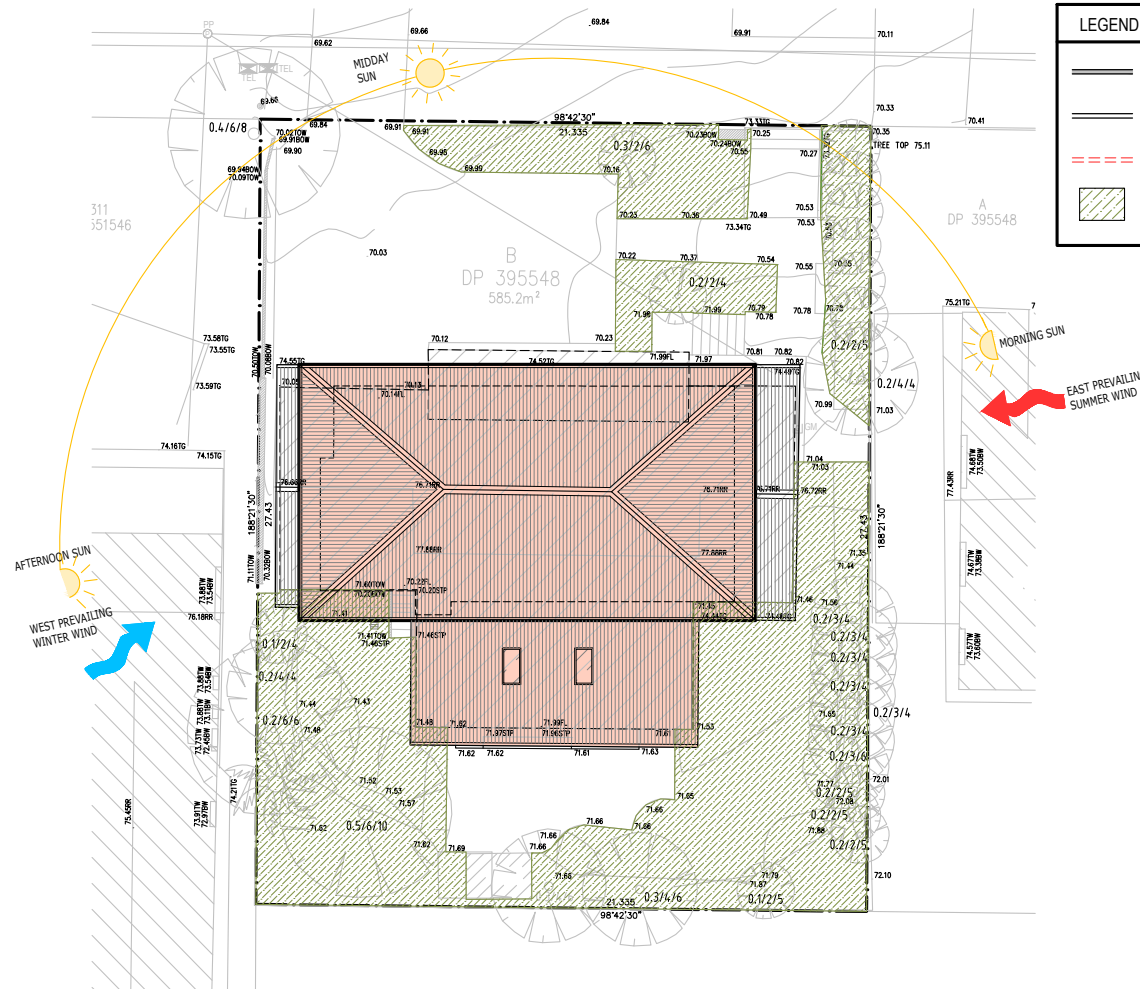
STUDIO Shop 1 316 Sydney Road Balgovish NSW 2093 t: 02 9029 5552 e: info@cradledesign.com.au w: www.cradledesign.com cradle ORIENTATION Norm Architects: Paul Lucas - 1716 Regan VanderWort-Walsh - 7804	REVISION REV A - 22.05.23 - FOR DEVELOPMENT APPLICATION REV B - 31.08.23 - CLAUSE 4.6 - HEIGHTS RESPONSE REV C - 05.10.2023 - SCALING CLARIFICATIONS	DETAILS CLIENT MARK & JULIE ANDERSON ADDRESS 3 LANTANA AVENUE, WHEELER HEIGHTS NSW 2097	PROJECT DRAWING TITLE PROPOSED SOUTH ELEVATION REFERENCE #580_3 LANTANA AVE SCALE DRAWN 1:100@A3 RVW DA 12 C DRAWING ISSUE
--	---	---	---



This drawing and design is subject to copyright and may not be reproduced without prior written consent. All dimensions to be verified and any discrepancies referred to Cradle Design prior to the commencement of any work. Use figured dimensions only.

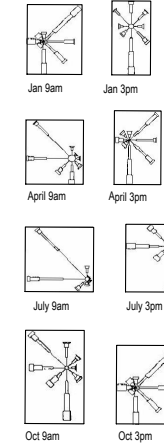
FOR DEVELOPMENT APPLICATION

STUDIO Shop 1 316 Sydney Road Balgovish NSW 2093 t: 02 9029 9552 e: info@cradledesign.com.au w: www.cradledesign.com cradle ORIENTATION		REVISION REV A - 22.05.23 - FOR DEVELOPMENT APPLICATION REV B - 31.08.23 - CLAUSE 4.6 - HEIGHTS RESPONSE REV C - 05.10.23 - SCALING CLARIFICATIONS	DETAILS CLIENT MARK & JULIE ANDERSON ADDRESS 3 LANTANA AVENUE, WHEELER HEIGHTS NSW 2097	PROJECT DRAWING TITLE PROPOSED EAST ELEVATION REFERENCE #580_3 LANTANA AVE SCALE DRAWN 1:100@A3 RVW DA 13 C DRAWING ISSUE
--	--	---	---	--



WIND ROSES

Sydney Airport AMO/AWS:
Source NSW Bureau of Meteorology



SITE COVERAGE CALCULATIONS		
	EXISTING	PROPOSED
SITE AREA	585.2m ²	NO CHANGE

LANDSCAPE OPEN AREA CALCULATIONS		
LANDSCAPING CONTROL = 40% OF 585.2m ² = 234.8m ²		
EXISTING LANDSCAPED AREA: 219.5m ²		
PROPOSED LANDSCAPED AREA: UNCHANGED		

PRIVATE OPEN SPACE CALCULATIONS		
PRIVATE OPEN SPACE CONTROL = TOTAL 60m ² with min. dimension of 5m		
REAR YARD: 219.5m ²		

FLOOR AREA CALCULATIONS		
	EXISTING	PROPOSED
GROSS FLOOR AREA (PRIMARY DWELLING)	Basement - 40.2m ²	Basement - 41.6m ²
	Ground Floor - 172.2m ²	Ground Floor - 162m ²
	First Floor - n/a	First Floor - 80.1m ²
	Total = 212.4m ²	Total = 283.7m ²

This drawing and design is subject to copyright and may not be reproduced without prior written consent. All dimensions to be verified and any discrepancies referred to Cradle Design prior to the commencement of any work. Use figured dimensions only.

STUDIO
Shop 1 | 316 Sydney Road
Balgowlah NSW 2083
c: 02 9029 9554
e: info@cradledesign.com.au
w: www.cradledesign.com.au

cradle ORIENTATION

REVISION
REV A - 22.05.2023 - FOR DEVELOPMENT APPLICATION
REV B - 05.10.2023 - SCALING CLARIFICATIONS

DETAILS
CLIENT
MARK & JULIE ANDERSON
ADDRESS
3 LANTANA AVENUE,
WHEELER HEIGHTS NSW 2097

PROJECT
DRAWING TITLE
SITE PLAN, SITE ANALYSIS & CALCULATIONS
REFERENCE
#580_3 LANTANA AVE
SCALE
1:150@A3
DRAWN
RVW

DA | **01 B**
DRAWING ISSUE

FOR DEVELOPMENT APPLICATION



Alterations & Additions to:
3 Lantana Avenue
Wheeler Heights
NSW 2097



**Clause 4.6 – Exception to a Development Standard in relation to
LEP Clause 4.3 2011 – Height of Buildings.**

Prepared by:
Cradle Design Pty Ltd
The Studio
Shop 1/ 316 Sydney Road
Balgowlah
NSW 2093
info@cradledesign.com.au
02 9029 5532
Nominated architects – **Regan VanderWert-Walsh – 7904**
Paul Lucas – 8786

© 2023 Cradle Design Pty Ltd

This document contains material protected under copyright and intellectual property laws and is to be used only by and for the intended client. Any unauthorized reprint or use of this material beyond the purpose for which it was created is prohibited. No part of this work may be copied, reproduced, or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system without express written permission from Cradle Design Pty Ltd.

Introduction

This written request is made pursuant to the provisions of Clause 4.6 of the Warringah Local Environmental Plan 2011 (LEP). A variation is sought in relation to the Height of Building development standard of Clause 4.3 of the LEP, in relation to alterations and additions to 3 Lantana Avenue, Wheeler Heights, NSW.

In our opinion, the non-compliance will not be inconsistent with existing and desired future planning objectives for the locality. For the reasons contained in this application, there are sufficient environmental planning grounds to justify the variation to the development standard in the circumstances of this case,

The Development Standard and the Variation Sought.

Overview.

APPLICANT'S NAME: Cradle Design Pty Ltd.

SITE ADDRESS: 3 Lantana Avenue, Wheeler Heights, NSW, 2097

PROPOSAL: Alterations and Additions to existing dwelling

This Clause 4.6 Exception to Development Standards has been prepared in accordance with the most recent case law. In our opinion, the variation achieves the objectives of the zone and development standard and has demonstrated there are sufficient environmental planning grounds to justify contravening the development standard.

The proposed works are illustrated in DA-01 to DA-21 prepared by Cradle Design. The proposed works include;

- Existing ground floor and basement alterations.
- Reconfigured front entry.
- First floor addition and connecting staircase.

Total existing floor area – 212.4m² (Existing ground and basement floors).

Total proposed floor area – 283.7m² (Existing ground, basement and new first floor).

Name of the applicable planning instrument which specifies the development standard.

Warringah Local Environmental Plan 2011 (LEP)

The development standard to which this request for variation relates is Clause 4.3 of the LEP – Height of Buildings. This Clause operates in conjunction with the Height Map which indicates a maximum 8.5m applies to the subject site. Clause 4.3 is consistent with the definition for a development standard under Section 1.4 of the Environmental Planning and Assessment Act 1979 (EPA Act).

The land is zoned:

Zone R2 Low Density Residential

The number of the relevant clause therein:

LEP Clause 4.3 – Height of Building – 8.5m

(1) The objectives of this clause are as follows

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

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

This Clause 4.6 Exception to Development Standards should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by Cradle Design Pty Ltd.

Why the objectives of the standard are achieved

Despite the proposed development's non-compliance with the applicable height development standard, the proposal achieves the desired character of the area. The proposal provides a height, bulk and scale that is generally consistent with that envisaged by Council's controls. Reasons why the proposed development achieves the objectives of the height standard are tested against the objectives and explained below:

- a) The bulk and scale of proposed design is in keeping with the neighbouring properties, many of which are 2 storeys above ground level and under the 8.5m height limit from the ground level. The variation to the height standard will not look out of place. The proposal complies with all other relevant planning controls.
- b) The proposed works are of minimal visual impact to the locality, and unlikely to lead to disruption of views, loss of privacy or loss of solar access to neighbouring properties foreseen.
- c) The development does not impact coastal or bush environments, as the works are contained within the existing building footprint. No tree or bush removal is proposed as part of this application.
- d) The development has no visual impact when viewed from the public places and is in keeping with residential developments in the locality.

How is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

Compliance with the development standard is unreasonable or unnecessary in this case. Reasons why are explained below:

- Despite the proposed development's non-compliance with the applicable height development standard, the proposal achieves the desired character of the area.
- The proposal provides a height, bulk and scale that is generally consistent with that envisaged by Council's controls.
- The new roofing which breaches the height limit follows the roof forms of the existing building and locality.
- The proposal will maintain solar access to private open spaces and to the habitable room windows of adjacent dwellings in accordance with the DCP requirements.
- There is no impact to any coastal or bush environments.
- New case law has pushed the roof over the 8.5m height control, which prior would have been sitting under the 8.5m height control.

Considering the scale of surrounding buildings and the limited impact of the design on the surrounding buildings, the development standard is unreasonable, unnecessary in this case.

Are there sufficient environmental planning grounds to justify variation of the development standard(s)?

The proposal is permissible in the Zone R2 Low Density Residential, is consistent with the relevant zone objectives and satisfies being 'unreasonable and unnecessary' as noted in the preceding section. There are sufficient environmental planning grounds to justify the technical height breach, which will be discussed below.

The proposal is consistent with the relevant aims/ objectives of the LEP and the objectives for Zone R2 Low Density Residential.

- The proposal provides northern facing living areas and external terrace (first floor), optimising natural light to living and private open spaces. Most of the existing living and private open space is currently south facing.
- The north facing roof provides the opportunity for a large solar array to be installed.
- The new roof and additions will be fully insulated to BASIX (or higher) requirements, enhancing the insulation performance of the house.
- It should also be noted that:
 - The proposal improves the amenity of the subject site while maintaining the amenity of surrounding development;
 - Is consistent with the objectives of the Zone R2 Low Density Residential and the relevant DCP built form and amenity provisions;
 - And results in an enhanced built form outcome.
 - While these factors may not strictly constitute environmental planning grounds, they should be considered in the assessment of the height breach.

Is there any other relevant information to be considered to justify variation of the development standard(s)?

- The bulk and scale of proposed design is in keeping with the neighbouring property.

- The proposal improves the amenity of the site, while maintaining the amenity of surrounding developments and dwellings.
- Is consistent with the objectives of the R2 Low Density Residential zone and the relevant DCP built form and amenity provisions.
- The proposal results in an enhanced built form outcome.
- The proposal is not considered to raise any matter of significance for State or regional environmental planning. The height non-compliance will enhance the amenity and functionality of the existing residential flat building without significantly, unreasonably, or unacceptably impacting neighbouring properties.
- The public benefit of maintaining the development standard is not considered significant given that, regardless of the non-compliance, the proposal will appear consistent in the streetscape.
- Accordingly, the proposal is consistent with the matters required to be taken into consideration before concurrence can be granted. The non-compliance contributes to a quality development which is consistent with the desired character of the precinct and is, in our opinion, in the public interest.

Conclusion

This written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard.

We are of the opinion that the consent authority should be satisfied that the proposed development will be in the public interest because it achieves the objectives of the standard and the development objectives of the R2 Low Density Residential zone pursuant to the LEP. On that basis, the request to vary Clause 4.3 should be upheld.

ITEM 3.5

**REV2023/0021 - 17 EDWIN AVENUE AVALON BEACH -
REVIEW OF DETERMINATION OF APPLICATION DA2023/0057
FOR DEMOLITION WORKS AND CONSTRUCTION OF A
DWELLING HOUSE**

REPORTING MANAGER

Adam Richardson

TRIM FILE REF

2023/709304

ATTACHMENTS

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

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to REV2023/0021 for Review of Determination of Application DA2023/0057 for demolition works and construction of a dwelling house on land at Lot 47 DP 17177, 17 Edwin Avenue AVALON BEACH, subject to the conditions set out in the Assessment Report.

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2023/0021
----------------------------	--------------

Responsible Officer:	Megan Surtees
Land to be developed (Address):	Lot 47 DP 17177, 17 Edwin Avenue AVALON BEACH NSW 2107
Proposed Development:	Review of Determination of Application DA2023/0057 for demolition works and construction of a dwelling house
Zoning:	R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Martin Joseph Cimino Lucy Page-Dutton
Applicant:	Pcl & Apr Pty Ltd

Application Lodged:	06/09/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	12/09/2023 to 26/09/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 808,735.00
---------------------------------	---------------

EXECUTIVE SUMMARY

This review application seeks consent for review of determination of DA2023/0057 which sought consent for demolition works and construction of a dwelling house. DA2023/0057 was refused on 29 June 2023.

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

The application was notified between 12 September 2023 to 26 September 2023. No submissions

were received during this period, or throughout the assessment of this review application.

Critical assessment issues included Section 8.3 of the Environmental Planning and Assessment Act 1979, building colours and materials, building envelope and landscaped area.

While the proposed development continues to seek a variation to the building envelope along both the north-eastern and south-western elevations, the extent of variation has been reduced and there are no unreasonable amenity impacts upon adjoining properties (as has been detailed within this assessment report). On balance, it is considered that the amendments to the proposed development has sufficiently overcome the reasons for refusal.

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

PROPOSED DEVELOPMENT IN DETAIL

This application seeks a review of determination of DA2023/0057, which was refused on 29 June 2023 for the following reasons:

1. **Public Interest**

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

Particulars:

The proposal cannot demonstrate compliance with the requirements and objectives Council's development control plan, in regard to built form and stormwater management.

2. **Stormwater Management**

Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B5.15 Stormwater of the Pittwater 21 Development Control Plan.

Particulars:

The application has not demonstrated that the stormwater likely to be generated by the proposal will not adversely impact downstream / adjoining properties, either through the creation of an inter-allotment drainage scheme or the provision of adequate calculations of on-site storage to cater for a 20% AEP state of nature storm event. The proposed development fails to provide a stormwater system that is consistent with Council's Water Management for Development Policy.

3. **Building Envelope**

Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D1.11 Building envelope of the Pittwater 21 Development Control Plan.

Particulars:

The extent of the non-compliance on the north-east elevation of the upper level is significant and will have an adverse visual impact when viewed from adjoining properties and the public domain.

The proposed review application seeks to demolish the existing dwelling house and outbuildings, and construct a two (2) storey residential dwelling, comprising the following:

Ground Floor

- Single vehicle garage
- External hardstand space
- Media room
- Water closet
- Laundry
- Open plan kitchen, dining and living room (with a butlers pantry within the kitchen area)
- Alfresco area with access from the internal living area
- Internal staircase

First Floor

- Master bedroom with walk-in robe and en-suite
- Bedrooms 2, 3 and 4
- Study
- Sitting area
- Walk-in linen cupboard
- Main bathroom and separate water closet

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 8.3 - Environmental Planning and Assessment Act 1979 - Section 8.3

Pittwater 21 Development Control Plan - D1.5 Building colours and materials
Pittwater 21 Development Control Plan - D1.11 Building envelope
Pittwater 21 Development Control Plan - D1.14 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 47 DP 17177 , 17 Edwin Avenue AVALON BEACH NSW 2107
Detailed Site Description:	The subject site consists of one (1) allotment located on the eastern side of Edwin Avenue, Avalon Beach. The site is regular in shape with a width of 12.19 metres and a depth of 44.80 metres. The site has a surveyed area of 543.8m². The site is located within the R2 Low Density Residential zone within the <i>Pittwater Local Environmental Plan 2014 (PLEP 2014)</i>. The site accommodates a dwelling house and outbuildings within a landscaped setting. The site is a low-level allotment, with the topography draining towards the rear boundary. The rear portion of the subject site has multiple large canopy trees. Adjoining and surrounding development Adjoining and surrounding development is characterised by dwelling houses ranging between one (1) and two (2) stories within a landscaped setting.

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:

- **DA2023/0057.** This development application sought consent for the demolition of the existing dwelling and the construction of a new two (2) storey dwelling, including the removal of three (3) trees. This application was refused under manager delegation on 29 June 2023, for the following reasons:
 - The proposal was not considered to be within the public interest
 - The proposal was inconsistent with the requirements for stormwater management
 - The proposal was inconsistent with the requirements for the building envelope

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
	for Further Information (RFI) letter via the NSW Planning Portal and email to the Applicant on 6 October 2023. Additional information was provided to Council via the NSW Planning Portal on 17 October 2023. As the proposed amendments are of a lesser or reduced environmental impact, in accordance with Council's Community Participation Plan (CPP), the amended application is not required to be re-notified. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a recommended condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a recommended condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

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

In accordance with Section 8.3 (2) of the Act, the request for the review must be made and determined within 6 months after the date of determination of the development application. The application was determined on 29 June 2023 and the notice of determination was issued on 29 June 2023. The review was lodged on 25 August 2023 and is to be considered by the Development Determination Panel on 8 November 2023, which is within 6 months of the date of determination.

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

The amendments to the proposal are outlined in the 'Detailed Description of Works' section of this report. The reasons for refusal were:

- Public Interest
- Stormwater Management
- Building Envelope

The amended architectural plans under this review application indicate a considerable reduction to the envelope breach (as has been shown within this report under section D1.11 Building envelope) so as to address this reason for refusal. Amended stormwater plans were provided which were reviewed by Council's Development Engineer, who are now satisfied that the proposed stormwater management is acceptable, subject to recommended conditions. By virtue of these amendments, the proposed development is now within the public interest.

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 12/09/2023 to 26/09/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and

Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<i>Supported, subject to conditions.</i> The proposal is supported with regard to landscape issues. <u>Additional Information comment 18/10/23:</u> The amended reports and plans are noted. No concerns are raised with the removal of trees 1 and 2 as they are exempt by species and as such can be managed or removed at the discretion of the applicant without consent. Tree 8 is an exotic street tree and no concerns are raised with its removal subject to native street tree replacement planting. The Arboricultural Impact Assessment (AIA) outlines that the remaining trees (3, 4, 5 and 6) can be retained, and these trees shall be protected during works as recommended in the AIA, subject to the imposed conditions. The landscape proposal is generally supported and all proposed planting shall be installed in accordance with the requirements outlined in the conditions of consent. <u>Original Comment Summary:</u> the latest Landscape Plan was requested.
NECC (Bushland and Biodiversity)	<i>Supported, subject to conditions.</i> The review application has been assessed against the following applicable provisions: - Pittwater LEP Clause 7.6 - Biodiversity Protection - Pittwater DCP Clause B4.6 - Wildlife Corridors It is noted that the arboricultural report submitted with the review application relates to Tree Permit application TA2021/0761 rather than the proposed development. For the purposes of this referral, the arboricultural report submitted as additional information for the original development application (Standfast Tree Services, dated '08/14/2022' but based on a site inspection undertaken 06/04/2023) has been relied upon. There are no objections from a biodiversity perspective to the removal of exempt trees T1, T2 and T8; however, support for the amended proposal is subject to the Landscape referrals team being satisfied that the amended stormwater design will not impact upon

Internal Referral Body	Comments
	native trees to be retained. Amendments to the Landscape Plan submitted with the review application are required in order to achieve consistency with Pittwater DCP Clause B4.6 - Wildlife Corridors.
NECC (Development Engineering)	Supported, subject to conditions. Original comments 5 October 2023 The proposal is the review of DA2023/0057 which was for the construction of a new dwelling. The submitted stormwater plan proposes discharge to a level spreader via two OSD systems. The proposed level spreader is parallel to the rear boundary however, the direction of flow appears to be towards the northwestern corner. The level spreader is to be located parallel to the contours with minimum 3m setback from the side boundary. Additional Information Provided on 18 October 2023 Amended stormwater plans have been reviewed. No objections to approval subject to conditions as recommended.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1356877S_02, dated 7

July 2023).

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

Commitment	Required Target	Proposed
Water	40	42
Thermal Comfort	Pass	Pass
Energy	50	50

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0 metres of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0 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 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	8.09m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.10 Essential services	Yes

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	Ground Floor 6.5m - 8.21m	N/A	Yes
		First Floor 6.5m - 8.43m	N/A	Yes
Rear building line	6.5m	Ground Floor 15.5m	N/A	Yes
		First Floor 19.08m	N/A	Yes
Side building line	2.5m	South-west Boundary <i>Ground Floor</i> 2.5m	N/A	Yes
		<i>First Floor</i> 2.5m	N/A	Yes
	1m	North-east Boundary <i>First Floor</i> 1.1m	N/A	Yes
		<i>First Floor</i> 2.42m	N/A	Yes

Building envelope	South-west Elevation 3.5m	Outside envelope for a length of 4.88m, with a maximum height of 0.35m	N/A	No
	North-east Elevation 3.5m	Outside envelope for a length of 11.51m, with a maximum height of 0.67m	N/A	No
Landscaped area	60% (326.28m ²)	Existing: 42.5% (231.2m ²)	29.1%	No
		Proposed: 55.1% (299.7m ²)	8.1%	No
		Proposed with variations: 61.11% (332.33m ²)	N/A	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
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.6 Wildlife Corridors	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.13 Pollution Control	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.23 Eaves	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes
D1.4 Scenic protection - General	Yes	Yes
D1.5 Building colours and materials	No	Yes
D1.8 Front building line	Yes	Yes
D1.9 Side and rear building line	Yes	Yes
D1.11 Building envelope	No	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	No	Yes
D1.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

D1.5 Building colours and materials

A colour schedule has not been provided with this application. As such, a condition of consent will be included within this report to ensure the external colours and finishes are of dark and earthy tones (BCA M - D range) so as to integrate the built form into the surrounding natural environment.

D1.11 Building envelope

Detailed description of non-compliance

This control requires development to be sited within a building envelope which is measured from the side boundaries at a height of 3.5 metres and then angled inward at 45 degrees.

The original development application sought consent for a substantial breach to the building envelope along the north-eastern elevation (for a length of 19.4 metres, at a height ranging between 0.4 metres and 1.4 metres), as shown in the figure below.

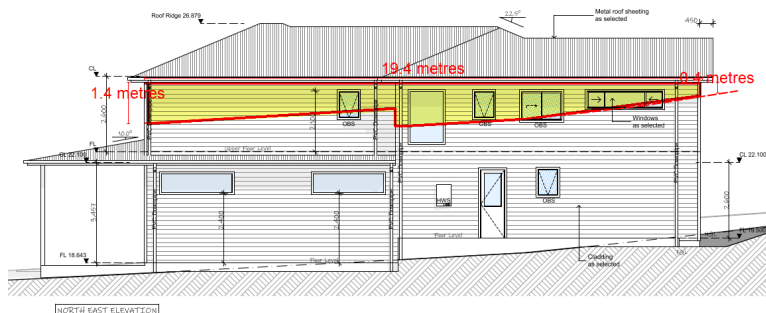


Figure 1. North-east elevation envelope breach under DA2023/0057 (extent of breach shown in yellow shading).

The proposed plans under this review application have been modified to address this breach.

However, the breach is still there to a far lesser extent along both the north-eastern and south-western elevations (as indicated in the below figures). Having regard to the topography of the site and the allowable two (2) storey built form of the PLEP 2014, it is considered that the resultant built form achieves the underlying outcomes of this control, as well as the desired outcomes prescribed within the PLEP 2014 for low density residential dwellings.

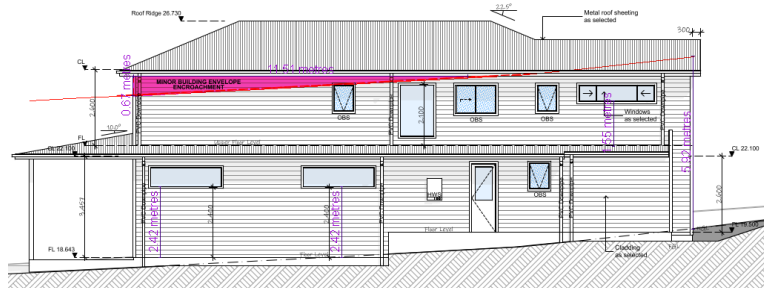


Figure 2. North-eastern elevation envelope breach (extent of breach indicated in pink shading).

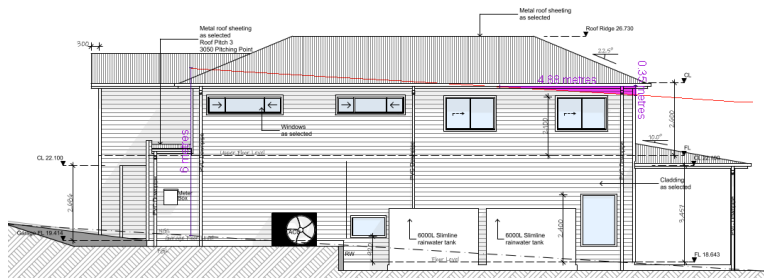


Figure 3. South-western elevation envelope breach (extent of breach indicated in pink shading).

Merit consideration

- *To achieve the desired future character of the Locality. (S)*

Comment:

Under A4.1 Avalon Beach locality within the P21 DCP, the proposal is generally consistent with the objectives of the desired future character of Avalon Beach. The proposed works are sited below the prescribed maximum building height of 8.5 metres (and therefore below the existing tree canopy), and achieves compliance with the side, front and rear setback requirements, as well as the minimum landscaped area requirement. In this instance, the proposed built form will not cause unreasonable amenity impacts upon adjoining properties or to public spaces.

- *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:

As detailed above, the proposed development will result in a generally compliant built form with no unreasonable amenity impacts. The extent of non-compliance is sited at the rear of the dwelling and will, therefore, not cause unreasonable impacts upon the existing streetscape. Furthermore, the building scale and density is below the height of the existing canopy trees within the natural environment. In this instance, the proposed built form will not cause unreasonable impact upon the existing streetscape, or adversely impact upon the

natural environment.

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

Comment:

Notwithstanding the extent of non-compliance to this control, the proposed development appropriately responds to the existing topography of the subject, with a minor degree of excavation which creates a stepped ground floor level. Two (2) trees within the property are required to be removed to accommodate the built form. Council's Landscape Officer has reviewed the proposal and has no issue with the removal of these trees as these are exempt species and can be removed at any time at the discretion of the Applicant without consent. In accordance with the proposed landscape plan (prepared by PDLA Landscape Architects, dated 5/5/2023), two (2) replacement trees are proposed throughout the site. In this instance, the proposed development appropriately responds to, reinforces and sensitively relates to the spatial characteristics of the existing natural environment.

- *The bulk and scale of the built form is minimised. (En, S)*

Comment:

As detailed above, and as shown in Figures 1 and 2, the extent of non-compliance to this control along the north-eastern and south-western elevations are minor and do not create any unreasonable amenity impacts upon adjoining properties. The proposed built form is consistent with new developments within the Avalon locality where two (2) storey residential dwellings within a landscaped setting are a consistent design. In this instance, the proposed bulk and scale of the built form is commensurate within the immediate locality, and thus the bulk and scale is appropriately minimised.

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

Comment:

The proposed non-compliances to this control do not create unreasonable impact upon the equitable preservation of views and vistas to and/or from public/private places.

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

Comment:

The extent of non-compliance does not give rise to privacy impacts upon adjoining properties as there are no windows proposed within encroachment, nor does the proposal result in unreasonable overshadowing to adjoining properties. In this instance, the proposal provides a reasonable level of amenity upon the occupants of the subject site and those of adjoining properties.

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

Comment:

As detailed above, the proposed development involves the removal of two (2) trees. There are also multiple canopy trees within the rear yard that will be retained. Two (2) trees are proposed within the front setback area, as well as mixed garden plantings, all of which will contribute to providing visual relief of the built form.

While the proposed development is numerically non-compliant with this control, it is consistent with the outcomes of the control and is considered appropriate within the locality.

D1.14 Landscaped Area - Environmentally Sensitive Land

Detailed description of non-compliance

The subject site is located within Area 2 of the Landscaped Area Map. In accordance with this control, the subject site is required to provide a minimum of 60% landscaped area throughout the subject site.

The existing landscaped area is 42.5% (or 231.2m²). The proposed landscaped area is 55.1% (or 299.7m²), which is a significant improvement, yet remains numerically non-compliant with the requirement of this control. Provided the outcomes of this control can be achieved, a variation may be permitted which allows pathways (and the like) of 1.0 metres width or less, and 6% of the total site area to be included in the overall landscaped calculation of the site. With the variations applied, the proposed landscaped area is increased to 61.11% (or 332.33m²), which achieves compliance with the minimum requirement of this control.

Merit consideration

- *Achieve the desired future character of the Locality. (S)*

Comment:

Under A4.1 Avalon Beach locality within the P21 DCP, the proposal is generally consistent with the objectives of the desired future character of Avalon Beach. The proposed works are sited below the prescribed maximum building height of 8.5 metres (and therefore below the existing tree canopy), and achieves compliance with the side, front and rear setback requirements. The proposal includes additional planting throughout the site to contribute to the landscaped character of Avalon Beach, to ensure that the built form appears as secondary within the natural environment. In this instance, the proposed built form will not cause unreasonable amenity impacts upon adjoining properties or to public spaces.

- *The bulk and scale of the built form is minimised. (En, S)*

Comment:

The numeric non-compliance to this control does not give rise to an unreasonable building mass. The proposed built form achieves compliance with the front, side and rear setback requirements. In this instance, there is appropriate spatial separation between properties which ensures the bulk and scale of the built form is appropriate within the residential setting.

- *A reasonable level of amenity and solar access is provided and maintained. (En, S)*

Comment:

The extent of non-compliance does not give rise to any unreasonable amenity impacts upon adjoining properties. Furthermore, the proposed building mass is not unreasonable as it is a generally compliant with the relevant built form controls. Shadow diagrams have been provided which indicate compliance with the solar access requirements under C1.4 Solar Access. In this instance, a reasonable level of amenity and solar access is provided to adjoining properties.

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

Comment:

The proposed development involves the removal of two (2) trees. There are also multiple canopy trees within the rear yard that will be retained. Two (2) trees are proposed within the front setback area, as well as mixed garden plantings, all of which will contribute to providing visual relief of the built form.

- *Conservation of natural vegetation and biodiversity. (En)*

Comment:

As detailed above and elsewhere in this report, the proposal includes the removal of two (2) trees within the property. However, these are exempt tree species and can be removed at any time at the discretion of the Applicant. Notwithstanding, the proposal includes additional tree and vegetation planting throughout the site which will contribute to the natural vegetation and biodiversity of the locality.

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

Comment:

Amended stormwater plans were provided during the assessment of this application. Council's Development Engineer has reviewed the proposed development and no concerns were raised. Notwithstanding the minor non-compliance, there remains ample soft land to assist in reduced stormwater runoff, as well as the prevention of soil erosion and siltation.

- *To preserve and enhance the rural and bushland character of the area. (En, S)*

Comment:

The subject site is not rural. As detailed above and elsewhere in this report, the proposal includes the removal of two (2) trees, as well as ample replacement planting throughout the site to contribute to the bushland character of the locality.

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

Comment:

As detailed above, the proposal provides ample soft surfaces to contribute to the infiltration of water into the water table, to minimise and assist with stormwater run-off.

While the proposed development is numerically non-compliant with this control, it is consistent with the outcomes of the control and is considered appropriate within the locality.

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 \$8,087 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$808,735.

CONCLUSION

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

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

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

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

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

PLANNING CONCLUSION

This review application, for review of determination of DA2023/0057 which sought consent for demolition works and construction of a dwelling house, has been referred to the Development Determination Panel (DDP) due to Council's DDP criteria, which requires all Review Applications be referred to the DDP for determination.

No submissions were received during the notification period, or throughout the assessment of this review application.

The critical assessment issues included Section 8.3 of the Environmental Planning and Assessment Act 1979, building colours and materials, building envelope and landscaped area.

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

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

RECOMMENDATION

THAT Council as the consent authority, reviews the determination of DA2023/0057 and grants Development Consent to REV2023/0021 for demolition works and construction of a dwelling house on land at Lot 47 DP 17177, 17 Edwin Avenue, 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
4/17	J	Demolition Site Plan	Icon Homes	22 August 2023
5/17	J	Proposed Site Plan & Driveway Profile	Icon Homes	22 August 2023
8/17	J	Ground Floor Plan	Icon Homes	22 August 2023
9/17	J	Upper Floor Plan	Icon Homes	22 August 2023
10/17	J	North-west & South-east Elevations	Icon Homes	22 August 2023
11/17	J	North-east & South-west Elevation	Icon Homes	22 August 2023
12/17	H	Section A-A	Icon Homes	22 August 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate 1356877S_02	N/A	Abeaut Design Pty Ltd	7 July 2023
Infiltration Testing	J5306	White Geotechnical Group	6 May 2022

Waste Management Plan	N/A	Icon Homes	1 September 2023
Arboricultural Impact Assessment	N/A	Standfast Tree Services	April 2023
Sheet 1 of 1 Landscape Concept Plan	2309-02	PDLA Landscape Architects	5 May 2023
Sheet 1 of 1 Stormwater Drainage Layout Plan	C	VNK Consulting Pty Ltd	15 October 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. **Approved Land Use**

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a **dwelling house**, in accordance with the Dictionary of the *Pittwater Local Environmental Plan 2014*, as follows:

Dwelling house means a building containing only one dwelling.

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.

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 \$8,087.35 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 \$808,735.00.

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 \$5,000 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. **Amendment of Landscape Plans**

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

- The location and species of the native tree that was required to be planted as a condition of Tree Permit TA2021/0761, with an indication as to whether the tree is existing (already planted) or proposed (not yet planted).
- At least 60% of new plantings are to be selected from the Pittwater Gardening Guide, or Native Planting Guide for the Pittwater Ward, both available on Council's website.

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

Reason: To maintain and replace habitat on the site.

8. **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 VNK Consulting, drawing number 121222-01, dated 15/10/2023. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

I. The level spreader to be located parallel to the contours and a minimum 1m from the side boundary

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

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

9. **Vehicle Crossings Application**

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 3.0 metres wide in accordance with Northern Beaches Council Standard Drawing Extra Low in accordance with Section 138 of the Roads Act 1993.

Note, driveways are to be in plain concrete only.

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

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

Reason: To facilitate suitable vehicular access to private property.

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

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

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

11. **Boundary Identification Survey**

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

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

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

12. **Compliance with standards (Demolition):**

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

Details demonstrating compliance with the relevant Australian Standard are to be submitted to Council prior to the commencement of demolition works.

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

13. **Compliance with Standards**

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

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

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

14. **External Finishes to Roof**

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

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

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

15. **External Finishes to Walls**

The external finish to the walls are not to be the following colours:

- white
- light blue
- red
- orange

- light grey
- beige

The chosen colour shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties and appropriately integrate into the surrounding natural environment.

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.

16. Sydney Water "Tap In"

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

17. 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 any recommendations of an approved Arboricultural Impact Assessment.

b) The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, and in particular:

- i) tree protection fencing around identified trees to be retained as shown in the Tree Protection Plan (T3, T4, T5 and T6), including any required trunk and branch protection, and ground protection,
- ii) requirements under Conclusions/Recommendations to preserve T3, T4, T5 and T6.
- iii) any stormwater works in tree protection zones.

c) All tree protection measures specified must:

- i) be in place before work commences on the site, and
- ii) be maintained in good condition during the construction period, and
- iii) remain in place for the duration of the construction works.

d) The Project Arborist shall provide certification to the Certifier that all tree protection measures under 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.

18. Tree Removal Within the Road Reserve

a) this consent approves the removal of existing trees within the road reserve as listed below:

i) T8 Robinia, subject to replacement tree planting within the road verge.

b) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

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

Reason: Public liability.

DURING BUILDING WORK**19. Tree and Vegetation Protection**

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

i) all trees within the site not approved for removal, including trees and vegetation nominated for retention on the approved Plans,

ii) all trees and vegetation located on adjoining properties,

iii) all trees and vegetation within the road reserve not approved for removal.

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 compliant to AS 4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.

20. **Condition of Trees**

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

i) a general decline in health and vigour,

ii) damaged, crushed or dying roots due to poor pruning techniques,

iii) more than 10% loss or dieback of roots, branches and foliage,

iv) mechanical damage or bruising of bark and timber of roots, trunk and branches,

v) yellowing of foliage or a thinning of the canopy untypical of its species,

vi) an increase in the amount of deadwood not associated with normal growth,

vii) an increase in kino or gum exudation,

viii) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,

ix) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

b) any mitigating measures and recommendations required by the Arborist/Project Arborist are to be implemented.

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

Reason: Protection of trees.

21. **Pre-clearance Survey**

Any habitat for native wildlife (including tree hollows) approved for removal is to be inspected for native wildlife prior to its removal. If native wildlife is found within habitat to be removed, a licensed wildlife rescue and rehabilitation organisation must be contacted for advice.

Any incidents in which native wildlife are injured or killed as a result of works are to be recorded, in addition to details of any action taken in response.

Written evidence of compliance (including records of inspections and any wildlife incidents) is to be provided to the Principal Certifier prior to any Occupation Certificate.

Reason: To protect native wildlife.

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. **Road Reserve**

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

Reason: Public safety.

24. **Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998)];
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

25. **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.

26. **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.

27. **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.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

28. **Street Tree Planting**

a) Street tree planting shall be installed in accordance with the following:

i) one (1) *Syncarpia glomulifera* (Turpentine).

b) All street trees shall be a minimum pre-ordered planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees. All street trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth generally, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, including a four post and top and mid rail timber tree guard, and watered until established, and shall be generally located at least 2.0 metres from driveways, and shall generally be centralised within the road verge.

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

Reason: to maintain environmental and streetscape amenity.

29. **Landscape Completion**

a) landscape works are to be implemented in accordance with the approved Landscape Plan(s) (drawing Landscape Concept Plan by PDLA dated 05/05/23), and inclusive of the following conditions:

i) landscape works are to be contained within the legal property boundaries,

ii) planting shall be installed as indicated on the approved Landscape Plan(s) unless otherwise imposed by any conditions,

iii) all tree planting shall be a minimum pre-ordered planting size of 75 litres; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth generally, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings and other trees or more, at least 1.5 metres from common

boundaries; and located either within garden bed or within a prepared bed within lawn,
iv) mass planting shall be installed at minimum 1 metre intervals (or less) for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch.

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

Reason: Environmental amenity.

30. **Condition of Retained Vegetation**

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

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

Reason: Tree and vegetation protection.

31. **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.

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

The Applicant is to submit the completed Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) to the Principal Certifier prior to issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

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

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

The Applicant shall create on the Title a restriction on the use of land and a positive covenant in respect to the ongoing maintenance and restriction of the on-site stormwater disposal structures within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land

Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted.

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

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

34. **House / Building Number**

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

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

Reason: Proper identification of buildings.

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

35. **Landscape Maintenance**

a) if any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components.

b) trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

c) if any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan(s) and any conditions of consent.

d) the approved landscape planted areas, whether containing lawn, gardens or planters shall in perpetuity remain as planting under the development consent, and shall not be replaced with any hard paved surfaces or structures.

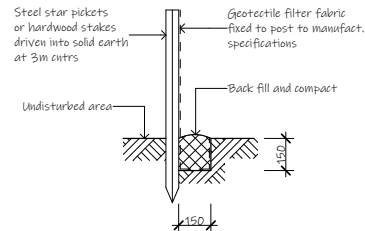
Reason: To maintain local environmental amenity.

36. **Geotechnical Recommendations**

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

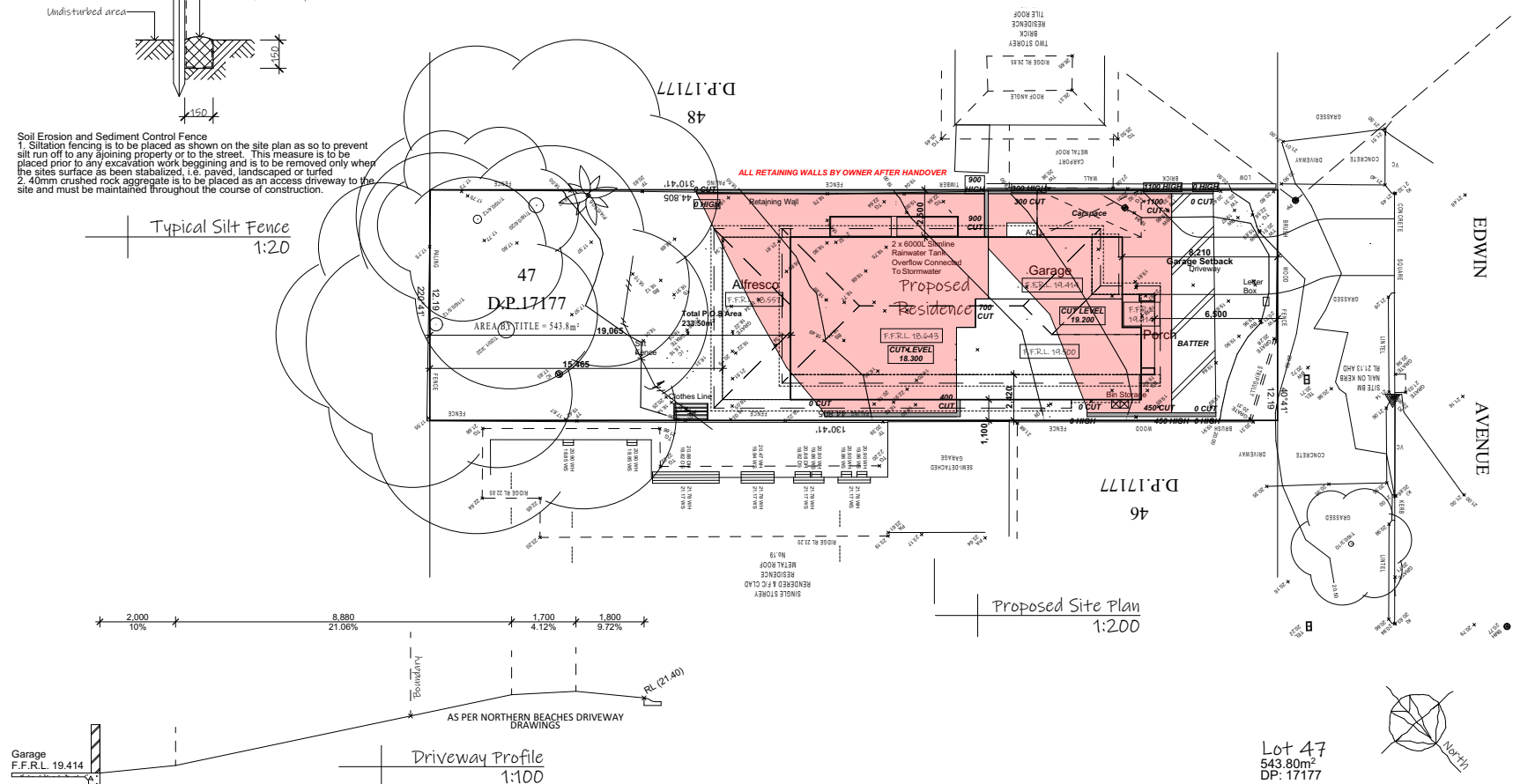
Reason: To ensure geotechnical risk is mitigated appropriately.

Artisan BY ICON HOMES



Soil Erosion and Sediment Control Fence
1. Siltation fencing is to be placed as shown on the site plan as so to prevent silt run off to any adjoining property or to the street. This measure is to be placed prior to any excavation work beginning and is to be removed only when the sites surface has been stabilized, i.e. paved, landscaped or turfed
2. 40mm crushed rock aggregate is to be placed as an access driveway to the site and must be maintained throughout the course of construction.

Typical Silt Fence
1:20



ISSUE: J
DRAWING: 22137-9
SHEET: 5/17
DATE: 22-8-23
PAPER: A3
LOT: 47
DP: 17177

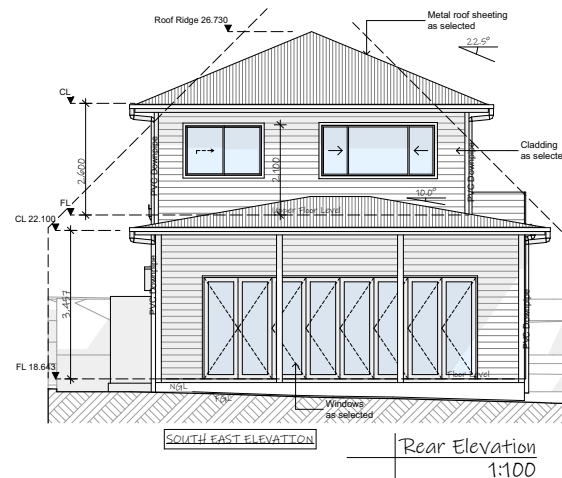
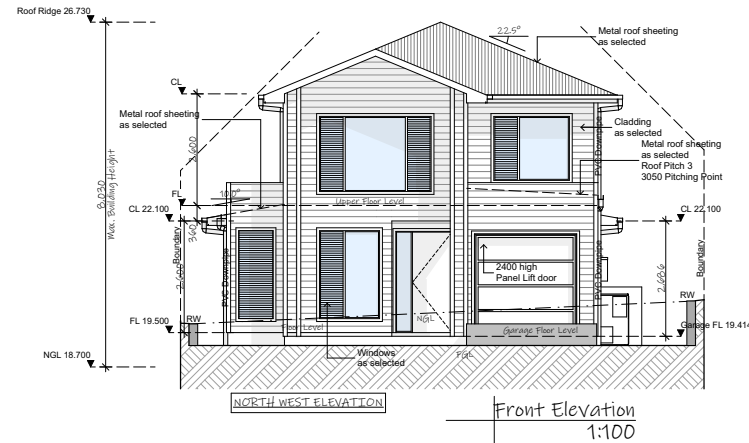
note: all works to be carried out in conjunction with the construction notes on sheet 2

Proposed Residence
#17 Edwin Avenue, Avalon Beach
Icon Job Number: J/D955

ACCURATE
design & drafting

info@accuratedesign.com.au
© abeaut designs t/a Accurate Design and Drafting 2023 02 4647 2552

Artisan BY ICON HOMES



ISSUE: **J** DRAWING: 22137-9 DATE: 22-8-23 LOT: 47
SHEET: 10/17 PAPER: A3 DP: 17177

note: all works to be carried out in conjunction with the construction notes on sheet 2

Proposed Residence
#17 Edwin Avenue, Avalon Beach
Icon Job Number: J/D955

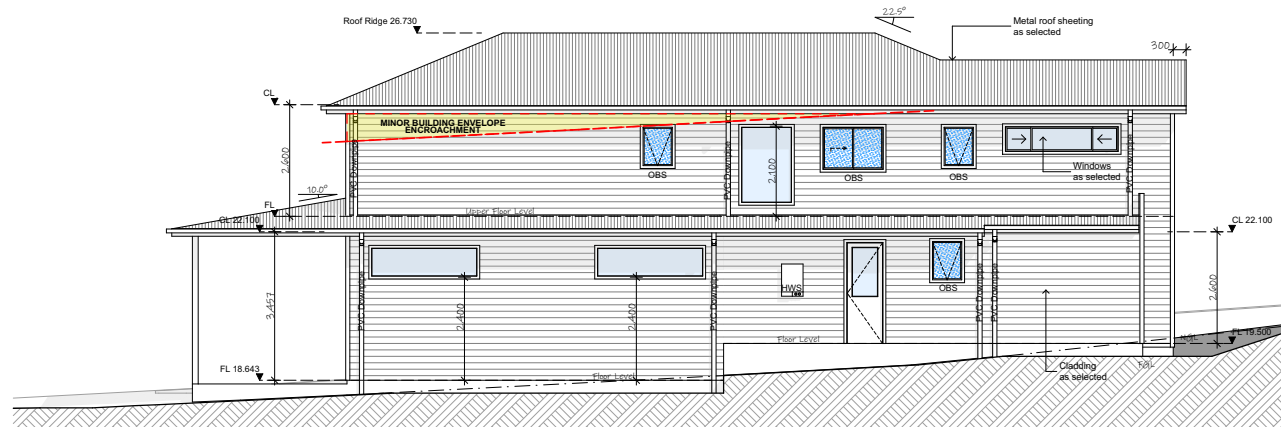
ACCURATE
design & drafting

info@accuratedesign.com.au 02 4647 2552
© abeaut designs t/a Accurate Design and Drafting 2023

Artisan BY ICON HOMES

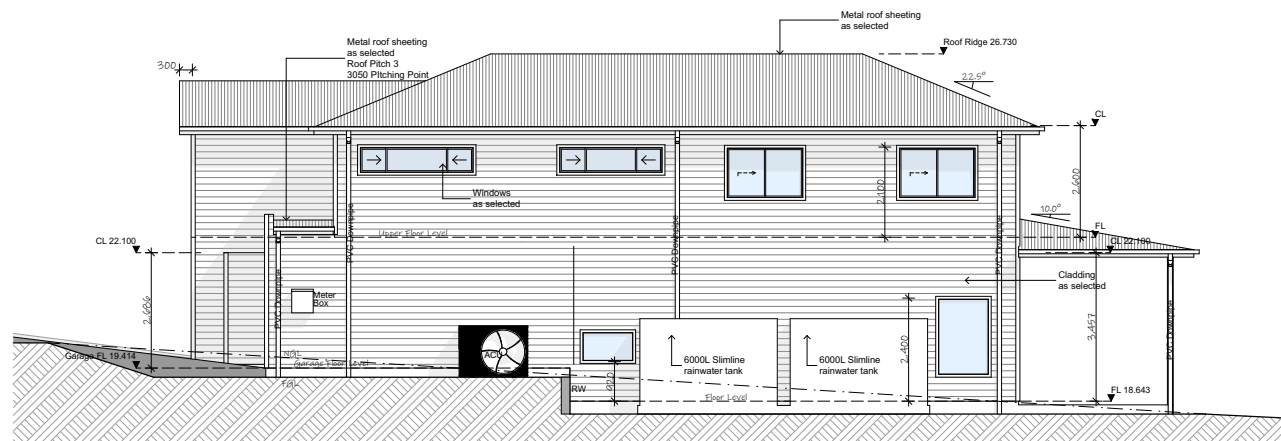


Legend:
ACU - Air Conditioning Unit
AJ - Articulation Joint
CL - Ceiling Level
FGL - Finish Ground Line
FL - Floor Level
HWS - Hot Water System
NGL - Natural Ground Line
OBS - Obscure
DP - Downpipe
RW - Retaining Wall



NORTH EAST ELEVATION

Side Elevation
1:100



SOUTH WEST ELEVATION

Side Elevation
1:100

ISSUE: J
DRAWING: 22137-9
SHEET: 11/17
DATE: 22-8-23
PAPER: A3
LOT: 47
DP: 17177

note: all works to be carried out in conjunction with the construction notes on sheet 2

Proposed Residence
#17 Edwin Avenue, Avalon Beach
Icon Job Number: J/D955

ACCURATE
design & drafting

info@accuratedesign.com.au
© abeaut designs t/a Accurate Design and Drafting 2023 02 4647 2552