

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 22 NOVEMBER 2023

Ashleigh Sherry
Manager Business System and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 22 November 2023
via Teleconference
Commencing at 10:00 AM**

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ACKNOWLEDGEMENT OF COUNTRY

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

1.0 APOLOGIES & DECLARATIONS OF INTEREST

Nil

2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 8 NOVEMBER 2023

RECOMMENDATION

That the Panel note that the minutes of the Development Determination Panel held 8 November 2023 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1 **DA2022/1974 - 84 QUIRK STREET DEE WHY - DEMOLITION
WORKS AND CONSTRUCTION OF A DWELLING HOUSE
INCLUDING SWIMMING POOL**

REPORTING MANAGER **Rod Piggott**

TRIM FILE REF **2023/749053**

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

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to DA2022/1974 for demolition works and construction of a dwelling house including swimming pool on land at Lot 2 DP 10683, 84 Quirk Street DEE WHY, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1974
Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 2 DP 10683, 84 Quirk Street DEE WHY NSW 2099
Proposed Development:	Demolition works and construction of a dwelling house including swimming pool
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Stephen Anthony Harris Natasha Yvette Harris
Applicant:	Stephen Anthony Harris
Application Lodged:	22/11/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	28/11/2022 to 12/12/2022
Advertised:	Not Advertised
Submissions Received:	9
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 6,231,272.00

EXECUTIVE SUMMARY

This development application seeks consent for demolition works and construction of a dwelling house including swimming pool.

The application is referred to the Development Determination Panel (DDP) due to receipt of nine submissions.

Concerns raised in the objections predominantly relate to acoustic and visual privacy, tree removal, building bulk, and view loss.

Critical assessment issues included non-compliance with side and front setbacks, and the above submission concerns.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for demolition works and construction of a new dwelling house, as follows:

- Demolition of the existing driveway, dwelling house and swimming pool,
- Construction of a two-storey detached dwelling house:
 - Ground floor: Double carport, guest room, library, kitchen, dining room, family room, bathroom, laundry, spiral staircase and landscaped courtyard,
 - First floor: bedrooms, void around the staircase, home office, and bathroom,
 - Roof: Solar panels and skylights,
- Construction of a storage space with workshop, toilet, onsite detention, bin room and plant room, with swimming pool above, fronting Bushey Place, connected to the dwelling house via access tunnel and lift shaft,
- Landscaping works including tree removal and planting.

The above description of works is accurate to the amended set of plans received on 25 October 2023, which supersede the original plans. In accordance with the Northern Beaches Council Community Participation Plan, the amended plans did not require re-notification, as the plans result in a lesser environmental impact than the original plans.

ASSESSMENT INTRODUCTION

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

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

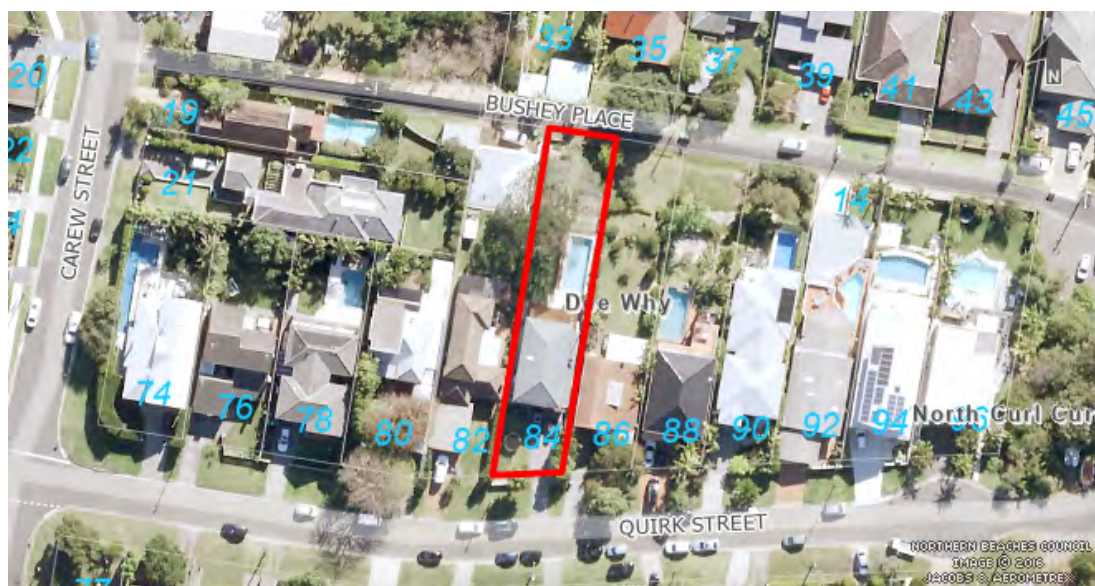
SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 1.9A Suspension of covenants, agreements and instruments
 Warringah Local Environmental Plan 2011 - Zone R2 Low Density Residential
 Warringah Local Environmental Plan 2011 - 6.2 Earthworks
 Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land
 Warringah Development Control Plan - B5 Side Boundary Setbacks
 Warringah Development Control Plan - B7 Front Boundary Setbacks
 Warringah Development Control Plan - D3 Noise
 Warringah Development Control Plan - D6 Access to Sunlight
 Warringah Development Control Plan - D7 Views
 Warringah Development Control Plan - D8 Privacy

SITE DESCRIPTION

Property Description:	Lot 2 DP 10683 , 84 Quirk Street DEE WHY NSW 2099
Detailed Site Description:	<p>The subject site consists of one allotment located on the northern side of Quirk Street, Dee Why.</p> <p>The site is irregular in shape with a frontage of 12.4 metres along Quirk Street and a maximum depth of 62.715 metres. The site has a surveyed area of 746m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a two-storey detached dwelling house with attached double garage, and a swimming pool in the rear yard.</p> <p>The site is generally level for the southern three quarters of the site, with the northern quarter sloping down approximately 5 metres to the north. The site contains a number of trees of varying sizes.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by one- and two-storey detached dwelling houses.</p>

Map:



SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site. The land has been used for residential purposes for an extended period of time.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended plans. Sufficient information was received on 25 October 2023</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 28/11/2022 to 12/12/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 9 submission/s from:

Name:	Address:
Mr Bryan Frederik Van Eck Mrs Tracy Anne Van Eck Bill Tulloch Peter Hornak Maddison Haines	82 Quirk Street DEE WHY NSW 2099
Mr Adrian Bernard Palser Ms Ingeborg Evelyn Carpenter	33 The Crescent DEE WHY NSW 2099
Lauris Knighton	16 Carew Street DEE WHY NSW 2099
John Bradley Grant Mrs Cheryl Pearl Grant	80 Quirk Street DEE WHY NSW 2099
Mrs Joan Marjorie Morgans	47 Bushey Place DEE WHY NSW 2099
Mrs Wendy Holloway	89 Quirk Street DEE WHY NSW 2099
Mr Howard Trevor Lipman	21 Carew Street DEE WHY NSW 2099
Mrs Angelina Coletta	43 Bushey Place DEE WHY NSW 2099
Mrs Patrice Frances Clues Mr Michael Ian Clues Blackwattle Planning	86 Quirk Street DEE WHY NSW 2099

The following issues were raised in the submissions:

- Objection to removal of the existing Port Jackson Fig in the rear yard.
- The proposed bamboo along the western and eastern boundaries will block light and reduce views.
- The landscape plan does not identify the species of all proposed trees.
- Impact on visual privacy to 21 Carew Street, 33 Bushey Place, and 80, 82 and 86 Quirk Street.
- The proposed 3 metre high boundary wall will unreasonably impact on 86 Quirk Street with reference to light and visual imposition.
- Impact on acoustic privacy to 86 Quirk Street due to the pool and courtyard.

- View loss to 80, 82 and 86 Quirk Street and 21 Carew Street.
- Overshadowing to adjoining properties.
- Dimensions of the Bushey Place driveway are unclear and the garage fronting Bushey Place should not be used as the main vehicular access point for the site.
- The proposed development is inconsistent with the objectives of the zone and the character of Quirk Street and Bushey Place.
- The proposed development is of excessive bulk and scale, with an unnecessary internal void, inadequate setbacks and an excessive length of 37 metres. The proposed development bears resemblance to the recent proposed development at 86 Quirk Street that was withdrawn at Council's encouragement due to bulk and scale.
- The proposed development relies on excessive excavation.
- The main dwelling building should not extend beyond the general building line of 82 and 86 Quirk Street. A covenant protecting views across the property from 82 Quirk Street exists on the land and is breached by the proposed development.
- Plans include irregularities - The fence around the pool is 1.8 metres high but shown to be much lower, and the western elevation differs between the elevation plan and section plan.
- Concern about stormwater runoff resulting from the development.
- The proposed development relies on incorrect interpretation and calculation of building height with respect to recent caselaw via the NSW Land and Environment court.

The above issues are addressed as follows:

Tree Removal, Proposed Planting and Landscape Plan

Comment:

The removal of the Port Jackson Fig is supported by Council's Landscape Officer due to the tree's poor health, subject to suitable tree replacement. This is addressed via a recommended condition of consent requiring the landscape plan to be updated. The condition requires stipulation of tree replacement species and restriction of the bamboo locations such that it does not result in unreasonable obstruction of views.

Amenity - Visual Privacy, Acoustic Privacy, View Sharing and Solar Access

Comment:

The proposed development is assessed as acceptable with respect to the requirements of Parts D3 Noise, D6 Access to Sunlight, D7 Views and D8 Privacy of the Warringah Development Control Plan 2011, as detailed in the relevant sections of this report. It should be noted that, as per amended plans received on 25 October 2023, the wall adjoining the courtyard, beside the western side boundary, has been reduced in height to a maximum of 1.8 metres, consistent with the height of a standard boundary fence.

Bushey Place Driveway and Garage Use

Comment:

The driveway on Bushey Place is 2.5 metres wide and 3.7 metres long. No objection was raised by Council's Development Engineer regarding the driveway. The garage is not shown on plans as the main vehicular access point for the site. The proposed dwelling will predominantly be accessed by vehicles via the proposed Quirk Street driveway and carport.

Zone Objectives and Character

Comment:

The proposed development is consistent with the objectives of the R2 Low Density Residential zone, as detailed in the relevant section of this report.

Bulk and Scale

Comment:

The proposed development is predominantly compliant with the applicable built form controls, with any non-compliance assessed as acceptable on merit, as detailed in the relevant sections of this report. The proposed development is of acceptable bulk and scale anticipated for the site by the controls. The bulk and scale of the previous withdrawn application at 86 Quirk Street is not relevant, as each individual development application is assessed on its own merits.

Excavation

Comment:

The proposed development is supported by a geotechnical risk assessment prepared by a suitably qualified professional. The report identifies that the proposed works are of acceptably low risk with respect to geotechnical hazards, subject to recommendations, which have been included as recommended conditions of consent. The proposed development is acceptable in this regard.

Rear Building Line and Covenant

Comment:

Amended plans received on 25 October 2025 demonstrate reduced building length to the rear with respect to view sharing across the site. The proposed development is assessed as acceptable with respect to view sharing for the reasons detailed in the section of this report relating to Part D7 Views of the Warringah Development Control Plan. The covenant on the land is addressed in the section of this report relating to Clause 1.9A Suspension of Covenants, Agreements and Instruments of the Warringah Local Environmental Plan 2011.

Plan Irregularities

Comment:

The queried portion of fence surrounds the pool and is 1.2 metres in height (not 1.8 metres), as confirmed by the reduced levels (RLs) shown on the plans. The height of the fence is RL 62.850 and the floor level of the pool area is RL 61.650, the difference of which is 1.2 metres. No inconsistency between plans is found.

Stormwater Management

Comment:

The proposed development is supported by stormwater plans prepared by a suitably qualified professional. Council's Development Engineer has reviewed the plans and is supportive of the proposed development and its supporting stormwater infrastructure, in accordance with Council's Water Management for Development Policy, subject to recommended conditions of consent. The proposed development is acceptable in this regard.

Building Height

Comment:

Amended plans received on 25 October 2023 correctly identify existing ground level (and, therefore, building height) in accordance with the judgement in *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582* by the NSW Land and Environment Court.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The application is assessed by Landscape Referral against Warringah Local Environmental Plan 2011 (WLEP) and the following Warringah Development Control Plan 2011 (WDGP) controls (but not limited to):

Internal Referral Body	Comments
	<ul style="list-style-type: none"> • D1 Landscaped Open Space and Bushland Setting; E1 Preservation of Trees or Bushland Vegetation; and E2 Prescribed Vegetation; as well as- • D8 Privacy; D9 Building Bulk; and D16 Swimming Pools and Spa Pools <p>A Arboricultural Impact Assessment (AIA) report and a Landscape Plan is submitted and noted for consideration.</p> <p>The AIA report recommends the removal of the Port Jackson Fig located where the on structure outdoor open space area is proposed, and the tree is unable to be retained should the application as designed be approved. In assessment of the Port Jackson Fig, it is noted that the condition of the tree has been in decline for some time such that it is apparent that the tree is unlikely to respond adequately to improve in health and condition, and therefore the recommendation for removal can be supported by Landscape Referral. The AIA report recommends replacement with at least two trees to offset the loss of existing canopy. However Landscape Referral do not consider that adequate landscape area 'by soil area and soil volume' is provided to provide offset canopy loss replacement, with the exception of the setback area to Quirk Street that is able to support one small tree.</p> <p>Landscape Referral note that the landscape area requirements (298.9m²) of control D1 Landscaped Open Space and Bushland Setting, are not satisfied. The presented calculations for landscape area on drawing DA.14 of 309m² includes 62m² of outdoor terrace area that is unable to be utilised as landscape area, and which alone results in a decrease to 247m². Furthermore the lawn area of 65m² over structure and serviced by a driveway from Bushy Place is contrary to the D1 requirements for landscaped area, including: a) Driveways, paved areas, roofed areas, tennis courts, car parking and stormwater structures, decks, etc, and any open space areas with a dimension of less than 2 metres are excluded from the calculation; and c) Landscaped open space must be at ground level (finished). Given such limitations to the landscape areas and the site layout arrangement, and the presented Landscape Plan scheme, Landscape Referral do not consider that the following objectives of control D1 are satisfied:</p> <ul style="list-style-type: none"> • To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building. <p>Landscape Referral consider that the Landscape Plan proposal as documented is not adequately designed to achieve the objectives of control D1, and additionally in the absence of documentation by a qualified professional does not achieve the a skilled landscape design under Council's DA Lodgement Requirements for Landscape Plans. The Landscape Plan provides a graphically representation of</p>

Internal Referral Body	Comments
	<p>the landscape scheme without providing clear design of the proposed planting in all areas and it is unknown/unclear what is proposed throughout the whole of the landscape scheme. The following items under Landscape Plans as listed in Council's DA Lodgement Requirements are not provided to assist in the assessment of the landscape scheme:</p> <ul style="list-style-type: none"> • proposed planting scheme including species selection, location, quantities, mature heights and pot sizes. Rather the Landscape Plan provides this information conceptually and the key information of location and quantities is not presented. <p>Based on the conceptual Landscape Plan which as stated is unclear in documentation, Landscape Referral determine the scheme as follows:</p> <ul style="list-style-type: none"> • the Quirk Street tree planting does not identify tree species adequately, and it is unknown therefore if canopy offset replacement is achieved, • the Bushey Place tree planting is not nominated to determine if canopy offset replacement is achieved, • the vegetation screening to the western boundary is predominately a small height and clumping Bamboo however the extent of this is not clear, • the vegetation screening to the eastern boundary 'courtyard' is predominately a small height and clumping Bamboo however the extent of this is not clear, • the vegetation screening to the eastern boundary adjacent to the outdoor terrace and lawn/pool is nominated as low height vegetation that is unable to provide screening, • the tree planting scheme proposes trees within close proximity to buildings and structures such that canopy development is unlikely, and will rather be anticipated as managed trees without canopy height and width. <p>Landscape Referral consider that site planning arrangement of building, structures and open spaces prevents any adequate canopy tree planting to satisfy the intent of WDCP control D1 "to provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building". Additionally it is considered that Landscape Referral are unable to impose conditions to achieve an adequate landscape design, as this will require re-design of the landscape design.</p> <p><u>Assessing Officer's Comment:</u> The support for removal of the Port Jackson Fig subject to replacement tree planting is noted.</p> <p>The proposed development is compliant with the landscaped area requirements of Part D1 Landscaped Area and Bushland Setting of the Warringah Development Control Plan 2011, as all areas of</p>

Internal Referral Body	Comments
	<p>landscaping are of at least 1 metre depth, including where above structures.</p> <p>A condition of consent has been included in the recommendation of this report stipulating that the landscape plan is to be amended to:</p> <ul style="list-style-type: none"> Specify tree species, Provide at least two canopy trees, and Restrict bamboo planting so as not to unreasonably obstruct views. <p>The proposed development is compliant with the requirements and intention of Part D1. As such, the application is supported for approval, subject to conditions of consent, as recommended.</p>
NECC (Development Engineering)	<p>Original Comments (1 February 2023):</p> <p>The existing driveway crossing in Quirk St is to remain which is acceptable. A new crossing off Bushey PI is also acceptable. The submitted stormwater plan including OSD is acceptable.</p> <p>Development Engineering support the proposal, subject to conditions as recommended.</p> <p>Updated Comments (31 October 2023):</p> <p>Development Engineering support the proposal, subject to conditions as recommended.</p>
External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>
Aboriginal Heritage Office	<p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1345380S_02 dated 24 October 2023). The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	41
Thermal Comfort	Pass	Pass
Energy	50	50

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for 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	8.1m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

1.9A Suspension of covenants, agreements and instruments

Clause 1.9A Suspension of Covenants, Agreements and Instruments provides the following:

(1) For the purpose of enabling development on land in any zone to be carried out in accordance with this Plan or with a consent granted under the Act, any agreement, covenant or other similar instrument that restricts the carrying out of that development does not apply to the extent necessary to serve that purpose.

(2) This clause does not apply—

- (a) to a covenant imposed by the Council or that the Council requires to be imposed, or*
- (b) to any relevant instrument within the meaning of section 13.4 of the Crown Land Management Act 2016, or*
- (c) to any conservation agreement within the meaning of the National Parks and Wildlife Act 1974, or*
- (d) to any Trust agreement within the meaning of the Nature Conservation Trust Act 2001, or*
- (e) to any property vegetation plan within the meaning of the Native Vegetation Act 2003, or*
- (f) to any biobanking agreement within the meaning of Part 7A of the Threatened Species Conservation Act 1995, or*

(g) to any planning agreement within the meaning of Subdivision 2 of Division 7.1 of the Act.

(3) This clause does not affect the rights or interests of any public authority under any registered instrument.

(4) Under section 3.16 of the Act, the Governor, before the making of this clause, approved of subclauses (1)–(3).

Comment:

The site is subject to a covenant (as per DP 638813) dated 4 September 1986. The covenant is not related to any matters in (2)(a)-(g) above. As such, the covenant does not apply, in accordance with (1) above. Notwithstanding this, the intention of the terms are considered as part of this assessment.

The intention of the terms is to protect views from 82 Quirk Street to the north-east, across the subject site. The proposed development is located such that it results in encroachment on the portion of land to which the covenant applies. A view sharing analysis has been undertaken in the section of this report relating to Part D7 Views of the Warringah Development Control Plan.

Zone R2 Low Density Residential

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

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

Comment:

The proposed development retains and enhances the existing residential use of the site.

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

Comment:

Not applicable. The proposal retains the existing residential 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 is low density in that it is for construction of a single detached dwelling house. The proposed development is compliant with the landscaped area required by Part D1 Landscaped Open Space and Bushland Setting of the Warringah Development Control 2011 and is proposed to include ample tree plantings. As such, the proposed development is adequately landscaped and is in harmony with the natural environment of Warringah.

6.2 Earthworks

The objectives of Clause 6.2 Earthworks require development:

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

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

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

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

the locality

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

(f) the likelihood of disturbing relics

Comment:

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

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

Comment:

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

6.4 Development on sloping land

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

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

Comment:

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

(b) the development will not cause significant detrimental impacts because of stormwater discharge

from the development site, and

Comment:

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

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

Comment:

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

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed		% Variation*	Complies
B1 Wall height	Max. 7.2m	Max. 7m		-	Yes
B3 Side Boundary Envelope	5m	E: Within envelope		-	Yes
		W: Within envelope		-	Yes
B5 Side Boundary Setbacks	E: Min. 900mm	Lower Ground:	Dwelling: 900mm	-	Yes
		Ground:	Courtyard Wall: 0m	100%	No
			Dwelling: Min. 900mm	-	Yes
			Chimney: 700mm	22.22%	No
			Pool: 900mm	-	Yes
		First:	Dwelling: Min. 1.5m	-	Yes
			Chimney: 700mm	22.22%	No
	W: Min. 900mm	Lower Ground:	Dwelling: Min. 1.2m	-	Yes
		Ground:	Dwelling: Min. 900mm	-	Yes
			Pool: 1.2m	-	Yes
		First:	Min. 900mm	-	Yes
B7 Front Boundary Setbacks (Quirk St)	Min. 6.5m	Ground: Min. 5.6m		13.8%	No
		First: Min. 8.4m		-	Yes

B7 Secondary Front Boundary Setbacks (Bushey PI)	Min. 3.5m	Min. 3.5m	-	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	Min. 40% (298.4m ²)	46.3% (345.3m ²)	-	Yes

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	No	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
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
D13 Front Fences and Front Walls	Yes	Yes
D14 Site Facilities	Yes	Yes
D15 Side and Rear Fences	Yes	Yes
D16 Swimming Pools and Spa Pools	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B5 Side Boundary Setbacks

The proposed development includes breaches to the eastern side boundary setback control. The proposal includes a courtyard wall with a nil setback to the boundary, and a chimney with a 700mm setback to the boundary, where a minimum of 900mm is required. The development is considered against the underlying objectives of the control as follows:

To provide opportunities for deep soil landscape areas.

Comment:

The proposed development provides ample landscaped area, compliant with the requirements of Part D1 Landscaped Open Space and Bushland Setting of the Warringah Development Control Plan 2011. The proposal is supplemented by a landscape plan that demonstrates suitable planting.

To ensure that development does not become visually dominant.

Comment:

The proposed non-compliant elements, being a wall and chimney, do not result in unreasonable visual dominance. The wall effectively acts as a fence, being up to 1.8 metres in height, and the chimney is a minor side element to the dwelling house.

To ensure that the scale and bulk of buildings is minimised.

Comment:

The proposed non-compliant elements relate to a wall equivalent to a side fence, and a chimney. The remainder of the development is compliant with side setbacks and side boundary envelope, thereby demonstrating the dwelling house is of a bulk and scale anticipated for the site.

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

Comment:

The actual dwelling house provides compliant (and beyond compliant) side setbacks so as to provide suitable building separation. The proposed development is acceptable with respect to privacy for the reasons detailed in the section of this report relating to Part D8 Privacy of the Warringah Development Control Plan 2011. The proposed development is compliant with the requirements of Part D6 Access to Sunlight of the Warringah Development Control Plan 2011.

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

Comment:

The proposed development provides for reasonable sharing of views from private properties, as demonstrated in the section of this report relating to Part D7 Views of the Warringah Development Control Plan 2011. The proposed development does not impact upon views from public land.

B7 Front Boundary Setbacks

The proposal includes a carport within 5.6 metres of the front boundary, where a setback of 6.5 metres is required by the control. The development is considered against the underlying objectives of the control as follows:

To create a sense of openness.

Comment:

The proposed carport is open in form, so does not present unreasonable bulk or enclosure in the front boundary setback area.

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

Comment:

The portion of the carport that is not compliant is the south-eastern corner only, and is due to the splayed frontage of the site. The majority of the carport structure is well compliant with the minimum setback required by the control. Given this, the proposed carport does not present an unreasonable break in continuity or pattern of buildings in the street. The proposal is complemented with suitable landscaping, which maintain the landscape pattern in the street.

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

Comment:

The proposed development presents an update to the site's presentation to the street, and is therefore an enhancement to the street's visual quality.

To achieve reasonable view sharing.

Comment:

The proposed development provides for reasonable sharing of views from private properties, as demonstrated in the section of this report relating to Part D7 Views of the Warringah Development Control Plan 2011. The proposed development does not impact upon views from public land.

D3 Noise

The submission from 86 Quirk Street raised concern that the proposed courtyard and pool locations would result in unreasonable acoustic privacy impacts. With regard to the objections raised, the development is considered against the underlying objectives of the control as follows:

To encourage innovative design solutions to improve the urban environment.

Comment:

The proposed development is innovative in that it allows for redevelopment of the subject site to suit the needs of the occupants, while remaining suitable in the context of applicable planning controls, and without unreasonable impact to the subject site or surrounding land.

To ensure that noise emission does not unreasonably diminish the amenity of the area or result in noise intrusion which would be unreasonable for occupants, users or visitors.

Comment:

The courtyard is proposed to be landscaped with large trees, ornamental rocks, and sculptures. It is evident that the courtyard is to be enjoyed from within the dwelling as a source of light and ambience, rather than a place of outdoor recreation. The courtyard is also treated with an acoustic wall, to ameliorate noise concerns to the adjoining property. The proposed pool is set in the rear yard of the subject site, behind the secondary street frontage, as required by Part D16 Swimming Pools and Spas of the Warringah Development Control Plan 2011, and the usable portion of the pool exceeds of minimum setback requirements. The pool is therefore well-located with respect to acoustic privacy.

D6 Access to Sunlight

Submissions raised concern that the proposed development will result in unreasonable overshadowing to 82 and 86 Quirk Street. The proposed development is compliant with the requirements of this

control, as demonstrated by the submitted shadow diagrams. The diagrams demonstrate that the private open spaces of the subject site and adjoining sites to the east and west achieve a minimum of three hours of sunlight to more than 50% of the required area of private open space (60m² according to Part D2 Private Open Space of the Warringah Development Control Plan 2011), between 9am and 3pm on June 21.

D7 Views

Submissions raised concern that the proposed development would result in unacceptable view loss to 80, 82 and 86 Quirk Street and 21 Carew Street. The development is considered against the underlying objectives of the control as follows:

To allow for the reasonable sharing of views.

Comment:

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

1. Nature of the views affected

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

Comment to Principle 1:

The affected views from all objecting properties contain other residential properties, Dee Why Lagoon and its land/water interface, Dee Why Beach and its land/water interface, Long Reef Headland, and the Pacific Ocean and its horizon.

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

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

Comment to Principle 2:

The affected views are obtained as follows:

- 80 Quirk Street: First floor rear balcony from standing and seated positions, across the eastern side boundary.
- 82 Quirk Street: Ground floor kitchen, living room, side deck and rear deck, first floor bedroom (with home office), and rear deck, from standing and seated positions, across the eastern side boundary.
- 86 Quirk Street: Ground floor living room and rear terrace, from standing and seated positions, across the western side boundary.
- 21 Carew Street: Eastern first floor bedroom window, from a standing position, across the rear boundary.

3. Extent of impact

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

example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating”.

Comment to Principle 3:

The following photos and descriptions depict the existing views and the anticipated impact of the proposed development on those views. The photographs contain height poles, which depict the built form of the original proposed development. The poles are no longer accurate to the current proposed development as per amended plans received on 25 October 2023, which reduced the overall built form to the rear, where view impact is greatest.

80 Quirk Street:

First floor rear balcony: The extent of view loss from this point is minor. The proportion of view lost is not significant with respect to the proportion of view retained. The portion of view lost contains the ocean and its horizon, while the more valuable elements of the view (being Dee Why Lagoon and its land/water interface, Dee Why Beach and its land/water interface, and Long Reef Headland) will be retained. It must also be noted that the existing Port Jackson Fig is proposed to be removed due to its declining health, which will have the additional effect of opening up a portion of the view from 80 Quirk Street.



Above: The view from the first floor balcony of 80 Quirk Street, from a standing position, looking north-east across 82 Quirk Street and the subject site.

82 Quirk Street:

Ground floor kitchen: The extent of view loss from this point is severe. The view to the north (Dee Why Lagoon) is retained, while the view to the north-east (Long Reef Headland, the ocean and its horizon) is anticipated to be lost. It is understood views from kitchens are generally highly valued. However, the kitchen of 82 Quirk Street is set deeply within the dwelling house, such that retention of view from this point would unreasonably restrict the development potential of the subject site, and would not be equitable sharing of views.



Above: The view from the ground floor kitchen of 82 Quirk Street, from a standing position, looking north-east, across the subject site.

Ground floor living room: The extent of view loss from this point is moderate. The view to the north is retained, including what can be seen of Dee Why Lagoon and its land/water interface. From the eastern-most point, being where occupants access the living room, but don't spend time, the view to the north-east is expected to be predominantly lost. From the western-most point, being where the living room is used for recreation, the view to the north-east is expected to be predominantly retained, including view to Long Reef Headland and its land/water interface. The portion of view expected to be lost is of the ocean and its horizon, and of 86 Quirk Street.



Above: The view from the western-most point of the ground floor living room of 82 Quirk Street, from a standing position, looking north-east, across the subject site.

Ground floor side deck: The extent of view loss from this point is moderate. The view corridor towards Long Reef Headland and its interface with the water is not extensive and is expected to be lost. The view corridor to the north will be retained.



Above: The view from the ground floor side deck of 82 Quirk Street, from a standing position, looking north-east across the subject site.

Ground floor rear deck: The extent of view loss from this point is moderate. The view to the north is retained, including what can be seen of Dee Why Lagoon and its land/water interface. The view to the north-east is expected to be predominantly retained, including view to Long Reef Headland and its land/water interface. The portion of view expected to be lost is of the ocean and its horizon.



Above: The view from the ground floor rear deck, from a standing position, to the north-west, north, and north-east.

First floor bedroom: The extent of view loss from this point is moderate. The view to the north is retained, including what can be seen of Dee Why Lagoon and its land/water interface. The view to the north-east is expected to be predominantly retained, including view to Long Reef Headland and its land/water interface. The portion of view expected to be lost is of the ocean and its horizon.



Above: The view from the first floor bedroom of 82 Quirk Street, from a standing position, looking north-east across the subject site.

First floor bedroom (home office): The extent of view loss from this point is moderate, in that a significant portion of the view is expected to be lost, but the point from which the view is gained is not considered particularly valuable. The view is gained from a home office in a bedroom, across a side boundary, mostly from a standing position, as the computer screens predominantly block views from a seated position.



Above: The view from the first floor bedroom home office of 82 Quirk Street, from a standing position, looking north-east across the subject site.

First floor rear deck: The extent of view loss from this point is moderate. The view to the north is retained, including what can be seen of Dee Why Lagoon and its land/water interface. The view to the north-east is expected to be predominantly retained, including view to Long Reef Headland and its land/water interface. The portion of view expected to be lost is of the ocean and its horizon.



Above: The view from the first floor rear deck of 82 Quirk Street, from a standing position, to the north-west, north, and north-east across the subject site.

86 Quirk Street:

Ground floor living room: The extent of view loss from this point is minor. The proposed development will have the effect of obstructing view to vegetation to the north-west only. The more valuable elements of the view towards the north and north-east (being Dee Why Lagoon and its land/water interface, Dee Why Beach and its land/water interface, and Long Reef Headland) are retained.



Above: The view from the ground floor living room of 86 Quirk Street, from a standing position, looking north-west across the subject site.

Ground floor rear terrace: The extent of view loss from this point is minor. The proposed development will have the effect of obstructing view to other dwellings and vegetation to the north-west only. The more valuable elements of the view towards the north and north-east (being Dee Why Lagoon and its land/water interface, Dee Why Beach and its land/water interface, and Long Reef Headland) are retained.



Above: The view from the ground floor terrace of 86 Quirk Street, from a standing position, looking north-west across the subject site.

21 Carew Street:

First floor eastern bedroom: The extent of view loss from this point is negligible. The proposed development will have the effect of obstructing view to the dwelling house at 86 Quirk Street only.



Above: The view from the first floor eastern bedroom window of 21 Carew Street, from a standing position, looking east across 82 Quirk Street and the subject site.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

The critical controls for the proposed development as they relate to view sharing are side setback, rear setback (or, more accurately, secondary street frontage setback), and side boundary envelope. The proposed development is predominantly compliant with these applicable building controls, with any non-compliant elements being minor in nature and acceptable on merit. The impact to views as a result of the proposed development are not attributable to any of those non-compliant elements. It is clear the proposed development is of a bulk and scale anticipated for the site by the controls, and is not an over-development of the site.

Given the development's compliance with controls, the question of whether a more skilful design could provide the Applicant with the same development potential and amenity while reducing the impact on the views of neighbours must be answered. The assessment above at Principle 3 establishes that the greatest view impact is to 82 Quirk Street, and that the impact to other properties is no worse than minor. As such, assessment of Principle 4 focuses on 82 Quirk Street.

Retention of views for 82 Quirk Street would require an even greater northern (rear) setback for the proposed dwelling house, as it is this portion of the development that results in the impact on views. It should be noted here that the development could (landscaped open space calculations pending) extend a further 17 metres to the north and a further 700 millimetres to the west and remain compliant with the required setback controls. Evidently, the proposal includes generous setbacks, beyond required compliance, so as to better respect views.

In order to achieve the view corridor sought by the objecting party at 82 Quirk Street, an increased northern setback to the dwelling house by a further 8 to 9 metres would be required, by way of significant reduction in the proposed development's floor space and/or internal courtyard. In this way, both the Applicant's development potential and amenity would be reduced, in that the dwelling house would have to be markedly smaller, with lesser access to ambient light. Such amendment cannot be considered reasonable with respect to Principle 4, as it fails the key requirements for skilful design. It is concluded that the proposed development is acceptable and reasonable with respect to view sharing.

To encourage innovative design solutions to improve the urban environment.

Comment:

Given the above, the proposed development is innovative in that it allows for redevelopment of the subject site to suit the needs of the occupants, while remaining suitable in the context of applicable planning controls, and without unreasonable impact to the subject site or surrounding land.

To ensure existing canopy trees have priority over views.

Comment:

Tree removal proposed under this application is due to declining tree health, rather than prioritisation

of views.

D8 Privacy

Submissions from 21 Carew Street, 33 Bushey Place, and 80, 82 and 86 Quirk Street raised concern that the proposed development will result in unreasonable visual privacy loss. With respect to the objections, the development is considered against the underlying objectives of the control as follows:

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

Comment:

In demonstrating the siting and design of the proposed development provides a high level of visual privacy, the requirements of the control are addressed as follows. Acoustic privacy is addressed in the section of this report relating to Part D3 Noise of the Warringah Development Control Plan 2011.

- *Building layout should be designed to optimise privacy for occupants of the development and occupants of adjoining properties.*
The proposed building layout includes private spaces for the purpose of indoor (living room) and outdoor (yard and pool) recreation on the ground floor. The layout orientates those spaces to the rear of the dwelling house, thereby discouraging viewing to the east and west towards adjoining properties. It is understood that 33 Bushey Place is located to the north, though this is across Bushey Place itself, and the dwelling and private open space on that property are set well away from the subject site, behind a garage, indicating more than adequate separation. The upper level of the dwelling is predominantly low-use rooms not for the purpose of recreation, being bedrooms, a study, and bathrooms. As such, the upper level layout poses less of a privacy imposition than more intense room uses like the kitchen or living room. The proposed development is well laid out for the visual privacy of the occupants of the subject site and adjoining sites.
- *Orientate living areas, habitable rooms and windows to private open space areas or to the street to limit overlooking. The effective location of doors, windows and balconies to avoid overlooking is preferred to the use of screening devices, high sills or obscured glass.*
The proposed development is well-designed to limit overlooking. As above, the living area and private open space are at the ground floor, orientated to the north (rear). Eastern and western windows to habitable rooms either have a high sill height (2 metres above finished floor level) or are treated with privacy screens. A condition of consent has been included to stipulate the composition of those screens to ensure their effectiveness.
- *The windows of one dwelling are to be located so they do not provide direct or close views (ie from less than 9 metres away) into the windows of other dwellings.*
A comparison of the location of windows in the proposed dwelling and the windows on the properties to the east and west (as based on approved plans for each property), demonstrates that the distances between some windows is less than 9 metres. However, as above, the proposed windows to habitable rooms on the subject site either have a high sill or are screened, and therefore do not provide direct views.

- *Planter boxes, louvre screens, pergolas, balcony design and the like are to be used to screen a minimum of 50% of the principal private open space of a lower apartment from overlooking from an upper apartment.*
Not applicable. The proposed development is for a dwelling house only.

With respect to the rear yards, it should be noted that little privacy exists on the site or adjoining sites, so there is little to be lost by the proposed development. The rear yards are generally open along this stretch of Quirk Street, such that properties can take advantage of the view.

Further, it should be noted that No. 82 Quirk Street is located between the subject site and 21 Carew Street, providing additional separation on top of the above described privacy measures.

To encourage innovative design solutions to improve the urban environment.

Comment:

The proposed development is innovative in that it allows for redevelopment of the subject site to suit the needs of the occupants, while remaining suitable in the context of applicable planning controls, and without unreasonable impact to the subject site or surrounding land.

To provide personal and property security for occupants and visitors.

Comment:

Given the above, the proposed development demonstrably provides personal and property security for the occupants and visitors of the subject site and surrounding land.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$62,313 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$6,231,272.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;

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

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

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

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

PLANNING CONCLUSION

This proposal, for demolition works and construction of a dwelling house including swimming pool has been referred to the Development Determination Panel (DDP) due to receipt of nine submissions.

The concerns raised in the objections have been addressed and resolved by amendment of the built form to increase privacy and reduce view loss.

Critical assessment issues included non-compliance with side and front setbacks, and the above submission concerns.

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 been recommended for approval.

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2022/1974 for Demolition works and construction of a dwelling house including swimming pool on land at Lot 2 DP 10683, 84 Quirk Street, DEE WHY, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA.01	D2	Site & Analysis Plan	Pieter Henry Architecture	10 October 2023
DA.03	D2	Bushey Place Level	Pieter Henry Architecture	10 October 2023
DA.04	D2	Quirk Street Level	Pieter Henry Architecture	10 October 2023
DA.05	D2	First Floor Plan	Pieter Henry Architecture	10 October 2023
DA.06	D2	Roof Plan	Pieter Henry Architecture	10 October 2023
DA.07	D2	Elevations	Pieter Henry Architecture	10 October 2023
DA.08	D2	Section	Pieter Henry Architecture	10 October 2023
DA.15	D2	Landscape Plan	Pieter Henry Architecture	10 October 2023
H-DA2-00	B	Legend, Details & Sedimentation Control	itm Design	19 October 2023
H-DA2-01	B	Bushey Place Level & Ground Floor Stormwater	itm Design	19 October 2023
H-DA2-02	B	First Floor & Roof Stormwater	itm Design	19 October 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate	1345380S_02	House Energy Certified	24 October 2023
NatHERS Certificate	8185969-01	House Energy Certified	24 October 2023
Geotechnical Investigation	J4555A	White Geotechnical Group	16 November 2022
Geotechnical Investigation Addendum	J4555B	White Geotechnical Group	18 October 2023

Arboriculture Assessment & Hazard Management Statement	4	Aura Tree Services	November 2022
Tree Condition Update	-	Growing My Way Tree Consultants	20 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. 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 November 2022

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

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

3. Prescribed Conditions

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

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work

relates (not being the Council) has given the Council written notice of the following information:

- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative requirement.

4. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether

the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$62,312.72 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 \$6,231,272.00.

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

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

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

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

6. **Security Bond**

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

7. **On 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 also be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.

The following soil depths are required to support landscaping as proposed:

- i) 300mm for lawn
- ii) 600mm for shrubs
- iii) 1m for small trees

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).

For all new residential works with two or more dwellings and mixed use developments the maintenance activity schedule shall incorporate an on-going maintenance plan that shall be submitted to the Certifier outlining a program to monitor and replenish soil levels as a result of soil shrinkage over time.

Reason: To ensure appropriate soil depth for planting and secure waterproofing and drainage is installed.

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 ITM Design Pty Ltd, drawing number 21/228 H-DA-00, 01 and 02 Revision B, dated 19/10/2023. 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:

1. The proposed outlet on the western boundary is to be connected to the proposed junction pit on the eastern boundary to provide a single outlet to Bushey Place.
2. The outlet pipe is to be constructed within a 150 high kerb adjacent to the existing bitumen in Bushey Place.

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. Traffic Management and Control

The Applicant is to submit an application for Traffic Management Plan to Council for approval prior to issue of the Construction Certificate. The Traffic Management Plan shall be prepared to TfNSW standards by an appropriately certified person.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process.

10. Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans

The recommendations identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans and documentation.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

11. **Vehicle Crossings Application**

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 3 metres wide in Bushey Place in accordance with Northern Beaches Council Standard Drawing Normal Profile in accordance with Section 138 of the Roads Act 1993.

Note, driveways are to be in plain concrete only.

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

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

Reason: To facilitate suitable vehicular access to private property.

12. **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.

13. **Amendments to the Landscape Plan**

The landscape plan is to be amended as follows:

- Specify the species of trees to be planted, with species selected from:
 - Council's Tree Guide, or
 - Council's Native Planting Guide - Curl Curl Ward
- At least two canopy trees are to be planted on the subject site, to offset removal of the Port Jackson Fig. The canopy trees are to be of species that achieve a mature height of no more than 8.5 metres.
- The proposed Himalayan weeping bamboo along the eastern and western side boundaries is not to be planted northward of the north elevation of the dwelling house, so as not to obscure views from adjoining properties.

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

Construction Certificate.

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

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 referenced in Condition 1 of this consent are to be incorporated into the construction plans. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of a Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

15. **Boundary Identification Survey**

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

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

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

16. **Structural Adequacy and Excavation Work**

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

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

Reason: To provide public and private safety.

17. **Compliance with Standards**

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

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

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

18. **Privacy Screening and Obscure Glazing**

The privacy screen louvres shown for windows WF01, WF02, WF03, WF07, and WF09 (near the western side boundary) are to be fixed in place at a 45-degree angle to the relevant external wall of the dwelling house, preventing direct viewing to adjoining properties to the east

and west (as relevant), spaced such that the gaps between louvres are no more than 20 millimetres in width.

The window of WF08 is to be of obscured glazing to a height of at least 1.5 metres above finished floor level.

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

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

19. **Sydney Water "Tap In"**

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

20. **Tree Removal Within the Property**

This consent approves the removal of the following tree(s) within the property (as recommended in the Arboricultural Assessment & Hazard Management Statement, prepared by Aura Tree Services, dated November 2022, and the Tree Condition Update, prepared by Growing My Way, dated 20 October 2023):

- i) Tree 1: *Ficus rubiginosa* (Port Jackson Fig), in the rear yard.

Note: Exempt Species as listed in the Development Control Plan or the Arboricultural Impact Assessment do not require Council consent for removal.

Reason: To enable authorised building works.

DURING BUILDING WORK

21. **Tree and Vegetation Protection**

- a) Existing trees and vegetation shall be retained and protected including:
 - i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
 - ii) all trees and vegetation located on adjoining properties,
 - iii) all road reserve trees and vegetation.
- b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the 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 Australian Standard 4970-2009 Protection of Trees on Development Sites,
- ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

- c) The arboricultural works listed in c) are undertaken and certified by an Arborist as complaint to the recommendations of the Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.

22. 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.

23. **Geotechnical Requirements**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

24. **Survey Certificate**

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

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

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

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

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

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

25. **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.

26. **Traffic Control During Road Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with TfNSW Traffic Control At Work Sites Manual. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works.

Reason: Public Safety.

27. **Aboriginal Heritage**

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

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

Department of Planning and Environment.

Reason: Aboriginal Heritage Protection.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

28. **Landscape Completion**

Landscaping is to be implemented in accordance with the approved Landscape Plan. All landscape works are to be contained within the legal property boundaries of the subject site. Prior to the issue of any Occupation Certificate details (from a landscape architect or landscape designer) 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.

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

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

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

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

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

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

31. **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

32. **Landscape Maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent.

The approved landscape area shall in perpetuity remain as planting under the development consent.

Reason: To maintain local environmental amenity.

33. **Geotechnical Recommendations**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

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

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

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

35. **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 or ancillary structures 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. Any variation to the approved land use and/occupancy will require the submission to Council of a new development application.

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





<div>PIETER HENRY</div> <div>make 161 Sydney avenue, North Sydney Ph: 02 9439 7166 Email: info@ph.com.au Ph: 02 9439 7166 Email: info@ph.com.au Ph: 02 9439 7166 Email: info@ph.com.au Ph: 02 9439 7166 Email: info@ph.com.au Ph: 02 9439 7166 Email: info@ph.com.au Ph: 02 9439 7166 Email: info@ph.com.au Ph: 02 9439 7166 Email: info@ph.com.au Ph: 02 9439 7166 Email: info@ph.com.au Ph: 02 9439 7166 Email: info@ph.com.au Ph: 02 9439 7166 Email: info@ph.com.au</div>										<div>ARCHITECTS</div>										<div>COPYRIGHT PIETER HENRY ARCHITECTS PTY LTD. UNLESS OTHERWISE AGREED IN WRITING. ALL RIGHTS TO USE THIS DOCUMENT AND DESIGN ARE SUBJECT TO PROVISION IN FULL OF ALL PPA CHARGES. THIS DOCUMENT MAY ONLY BE USED FOR THE EXPRESS PURPOSE AND PROJECT FOR WHICH IT HAS BEEN CREATED AND ISSUED AS ADVISED BY PHA, AND THIS DOCUMENT MAY NOT BE OTHERWISE USED OR COPIED. ANY UNAUTHORISED USE OF THIS DOCUMENT IS AT THE USER'S SOLE RISK AND WITHOUT LIMITING THIS, BEARS THE USER'S RISK, AND INCURRIES FINANCIAL AND LEGAL LIABILITY TO THE USER.</div>																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																									
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ITEM 3.2 **DA2023/0782 - 20 ALBERT STREET FRESHWATER -
ALTERATIONS AND ADDITIONS TO EXISTING RESTAURANT
AND INCREASE IN HOURS OF OPERATION**

REPORTING MANAGER Rod Piggott
TRIM FILE REF 2023/748990
ATTACHMENTS 1 [↓ Assessment Report](#)
 2 [↓ Site Plan and Elevations](#)

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to DA2023/0782 for alterations and additions to existing restaurant and increase in hours of operation on land at Lot 21 DP 226287, 20 Albert Street FRESHWATER, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0782
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Responsible Officer:	Kye Miles
Land to be developed (Address):	Lot 21 DP 226287, 20 Albert Street FRESHWATER NSW 2096
Proposed Development:	Alterations and additions to existing restaurant and increase in hours of operation
Zoning:	Warringah LEP2011 - Land zoned E1 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Dominic Seeto Rose Seeto
Applicant:	David Moody

Application Lodged:	28/06/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	04/07/2023 to 18/07/2023
Advertised:	Not Advertised
Submissions Received:	8
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 147,000.00
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EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to an existing restaurant to provide an outdoor seating area. The proposal also seeks consent to increase the existing hours of operation.

The application is referred to the Development Determination Panel (DDP) due to receiving eight (8) submissions in objection to the proposal. Concerns raised in the objections predominantly relate to amenity impacts, particularly loss of acoustic privacy, traffic issues and parking. The proposal does not result in any variations to principal development standards under WLEP 2011 or built form controls

under WDCP.

A detailed assessment has been conducted and the proposal is found to be consistent with the objectives of relevant standards and controls, with no matters that would warrant the refusal of the proposed development.

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

PROPOSED DEVELOPMENT IN DETAIL

Development application for alterations and additions to existing restaurant and increase in hours of operation.

The proposed development comprises of the following works:

New outdoor seating area

- Removal of the driveway and existing 2 on-site parking spaces to provide an additional 35m² covered outdoor dining courtyard
- New masonry wall along the northern boundary
- New masonry wall along the eastern edge of the proposed outdoor seating
- New fixed shut polycarbonate roofing system over outdoor seating area
- New enclosed bin area located adjoining the proposed masonry wall and eastern boundary
- Associated fit out of outdoor dining area

Operational Details

The operational details are listed within the submitted Plan of Management, however a brief overview is provided below.

Hours of Operation

The proposal seeks an increase in the existing hours of operation. As listed below, the proposed outdoor area will include restricted hours.

Existing

Monday to Sunday: 11:30am - 10:00pm

Proposed

Indoor Seating Area

Monday to Saturday: 12.00pm - 12.00am

Sunday and Public Holidays: 12.00pm - 10:00pm

Outdoor Seating Area

Monday to Thursday: 12.00pm - 8:00pm

Friday and Saturday: 12.00pm - 10:00pm

Sunday and Public Holidays: 12.00pm - 8:00pm

Staff and Patrons

No changes are proposed to the approved staff or patron capacities.

Traffic Management

Deliveries will utilise the loading zones currently available in proximity of the subject site.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

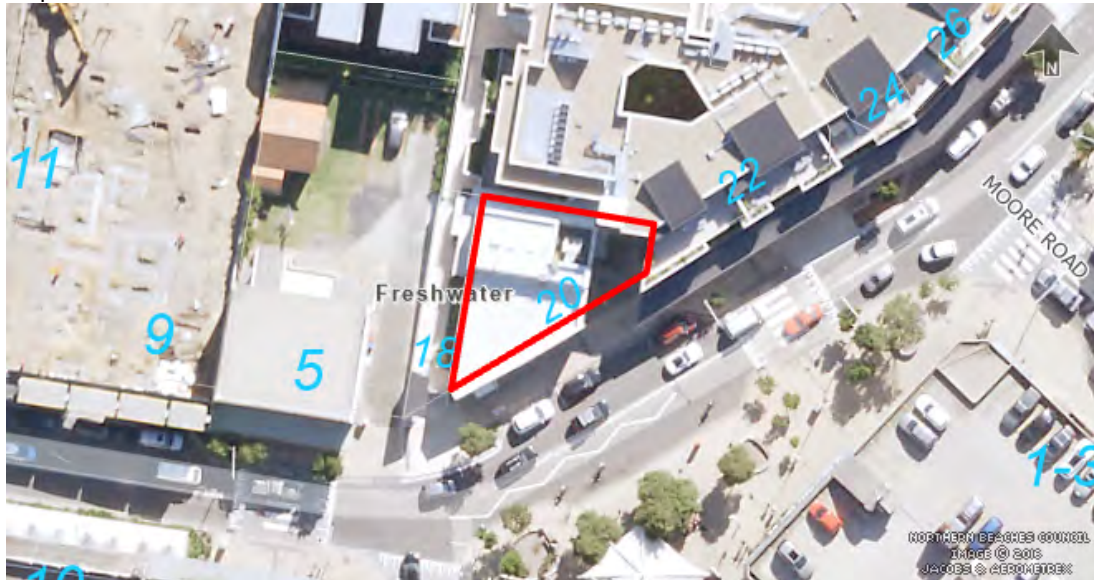
Warringah Development Control Plan - B6 Merit Assessment of Side Boundary Setbacks
Warringah Development Control Plan - B10 Merit assessment of rear boundary setbacks
Warringah Development Control Plan - C2 Traffic, Access and Safety
Warringah Development Control Plan - C3 Parking Facilities
Warringah Development Control Plan - D3 Noise
Warringah Development Control Plan - D8 Privacy

SITE DESCRIPTION

Property Description:	Lot 21 DP 226287 , 20 Albert Street FRESHWATER NSW 2096
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the north eastern side of Albert Street, Freshwater.</p> <p>The site is irregular in shape and has a surveyed area of 260m².</p> <p>The site is located within the E1 Local Centre and accommodates a two storey brick building with two on site car parking spaces. The site has been previously cleared and there is no vegetation or significant environmental features on the site.</p> <p>Detailed Description of Adjoining/Surrounding Development</p>

Adjoining and surrounding development is characterised by low and medium density development providing for a range of commercial and residential uses.

Map:



SITE HISTORY

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

REV2023/0010

Review of Determination of Application DA2022/1320 for alterations and additions to an existing restaurant and a change of hours. Specifically, the proposal was amended to include a fixed shut acoustic awning over outdoor seating area. This application was withdrawn on 16 June 2023 as a determination could not be made within the 6-month review period.

DA2022/1320

Development application for alterations and additions to an existing restaurant and a change of hours. Specifically, the proposal comprised of a new outdoor seating area and a change of operation hours in the existing indoor seating area. The application required delegation to the the Development Determination Panel (DDP) due to seven community objections being received during the notification period. Approval of the application was recommended to the panel following officer assessment, however was refused by DDP on 20 December 2022, as the acoustic properties of the proposed retractable shade sail covering the proposed outdoor dining area did not provide the required level of noise protection.

DA2021/1541

Development Application for use of premises as a restaurant. Specifically, the proposal comprised of the change of use from a take away food and drinks premise to a restaurant with increased number of patrons and change in hours of operation. The proposal comprised of some minor alterations and additions to the internal and external walls of the building.

At the public meeting held on 17 November 2021, the Panel was addressed by 2 representatives of

the applicant. The panel generally agreed with the assessment report and conditions. The application was subsequently approved on 17 November 2021 by Northern Beaches Local Planning Panel

CDC2021/0324

Complying Development Certificate for Change of use from a business premises to a take-away food premise with maximum seating capacity of 8 patrons, including internal alterations approved on 14 April 2021.

CDC2010/0009

Complying Development Certificate for Internal alterations to a business premises approved on 5 February 2010.

DA2001/1857

Development Application for Internal alterations and fitout, and external sign approved on 20 December 2001.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report. The NSW employment zones reforms have been made and will come into force on 26 April 2023. These reforms will result in this property changing from a B2 Local Centre zone to a E1 Local Centre zone. The proposed use will remain permissible in the new zone.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	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. No additional information was requested in this case. <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.

Section 4.15 Matters for Consideration	Comments
	<p>Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p>Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 04/07/2023 to 18/07/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 8 submission/s from:

Name:	Address:
Kenneth Regan	1 / 8 Lawrence Street FRESHWATER NSW 2096
Mr Ross Malcolm Locket	406 / 2 Sylvan Avenue BALGOWLAH NSW 2093
Mr Daniel Thomas Cape	2 / 8 Lawrence Street FRESHWATER NSW 2096
Michael Mihail	Address Unknown
Miss Qingliang Zhong	3 / 18 Albert Street FRESHWATER NSW 2096
Mr Sonny Tunganemaru Ryan Mrs Alicia Colette Ryan	PO Box 293 MANLY NSW 1655
Miss Maree Portanger	22 Undercliff Road FRESHWATER NSW 2096
Ms Diana Margaret Ryall	50 Undercliff Road FRESHWATER NSW 2096

Eight (8) submissions were received during the community notification period and the following concerns were raised:

- **Parking and Traffic**

Comment:

Concern was raised regarding parking and congestion issues along this section of Albert Street which will be impacted by proposed loss of parking and delivery vehicles. The proposal will result in a net parking loss of one space and is supported by a Traffic & Parking Impact Assessment Report that indicates there is sufficient alternative parking available in the surrounding streets and Council car park. The application was referred to Council's Traffic Engineer who determined that the change is considered to have a minimal impact, subject to conditions. Furthermore, a new Loading Zone on the west side of Moore Road, immediately to the south of Albert Street has recently been approved by Council's Traffic Committee, providing an additional facility for delivery vehicles to the restaurant.

This matter does not warrant the refusal of the application.

- **Privacy**

Comment:

Concern was raised in regards to aural and visual privacy impacts of patrons of the outdoor dining area towards adjoining residential living spaces. Detailed assessments of privacy has been addressed in sections D3 and D8 of this report.

It is notable that no increase to the existing approved patron numbers or capacity is proposed as a result of this application.

An addendum (dated 8 December 2022) to the Acoustic Assessment prepared by Pulse White Noise Acoustics provided with DA2022/1320 has been provided with this review application. The addendum details the new roof system proposed to cover the outdoor dining area and states the acoustic rating of the new Danpal system is greater than that of the previously proposed fabric system.

Furthermore, Council's Environmental Health Officer has reviewed the application and provided

no objection to approval, subject to recommended conditions of consent, including a condition for an Acoustic Review requiring a review/further assessment upon operation to determine if assumptions and calculations are accurate in actual operation and ensure any necessary adjustments to design or operation necessary are made to achieve compliance and protect the amenity of the surrounding area.

It should also be noted that Clause 5.20 of the Warringah LEP 2011 states that the consent authority must not refuse consent to development in relation to licensed premises due to the playing or performing of music.

This matter does not warrant the refusal of the application.

- **Waste**

Comment:

Concern was raised regarding the extent of waste being produced by the restaurant including the effectiveness of the proposed waste room and resultant offensive odours.

As per the accompanying Architectural Plans and Plan of Management, the proposal involves constructing a bin room along the northern end of the subject site, which is considered adequate to store waste and avoid any obstructions to the community or encroach on council property. The application is also supported by a Plan of Management that details odour emissions will be minimised. As such, an Avalier Electrostatic Precipitator has been fitted to the exhaust which will achieve at a minimum a 91.3%- 98.5% particle removal efficiency. A bin room is also proposed with a metal roof to inhibit odours.

This matter does not warrant the refusal of the application.

- **Air Pollution**

Comment:

Concern was raised regarding poor air quality in the local area which shall be further impacted by smoking patrons and emissions from the restaurant.

Under the Smoke-free Environment Act 2000 smoking and using e-cigarettes in outdoor dining areas is prohibited. Additionally, the proposed hours of operation are consistent with that of surrounding businesses which is a permitted in the business zone. A condition of consent Hours of Operation has been included which requires that upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

This matter does not warrant the refusal of the application.

- **Property values**

Comment:

Concern was raised that the proposal will impact surrounding property values, however, this matter is not a relevant consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979.

This matter does not warrant the refusal of the application.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>Supported - subject to conditions</p> <p>The application has been investigated with respects to aspects relevant the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Environmental Health (Industrial)	<p>Supported - subject to conditions</p> <p>This proposal is basically the previous Council refused DA with a change to the roofing system to improve acoustics.</p> <p>The Proposed Polycarbonate (Danpal) roofing system has been reviewed by Pulse White Noise Acoustics Pty Ltd 8 December 2022 as meeting and exceeding their compliance criteria.</p> <p>Since the initial referral Environmental has become aware of concerns of neighbouring residents about noise immediately outside of premises particularly at 12pm closing time and additionally noise from nearby late closing businesses: the changes to the area as a nighttime precinct appear supported by Council and State Government. Sleep depredation is an arising Public Health issue, however we have only been tasked to look at the noise issues generated on the actual development site. Accordingly noise in public areas is for others to judge.</p> <p>Therefore, with the improved roof cover design Environmental Health supports the proposal with conditions.</p>
Environmental Health (Food Premises, Skin Pen.)	<p>Supported - no conditions</p> <p>This is essentially refused DA2022/1320 - with a new roofing system to deal with noise related concerns.</p> <p>" Industrial " related comments are dealt with else where.</p> <p>Environmental Health also consider Sanitary Facilities under the BCA requirements.</p> <p>However to patron numbers remain the same as DA2021/1541 and are stated as:</p>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> Outdoor seating area facing Albert Street: Maximum of 20 patrons Indoor dining area: Maximum of 51 people Staff: Maximum of 10 people <p>Environmental Health in this referral of food related matters supports the proposal without conditions.</p>
NECC (Development Engineering)	<p>Supported - subject to conditions</p> <p>20/07/2023: It is noted that Council's Traffic Team has supported the proposal. Development Engineering have no objections to approval subject to conditions as recommended.</p> <p>10/07/2023: Development application is for alterations and additions to an existing restaurant including removal of the existing vehicular access to the site and removal of existing 2 onsite parking spaces to provide an additional 35m2 covered outdoor dining courtyard.</p> <p>This will lead to no future vehicle access or on-site parking to the site.</p> <p>It is noted that referral request to Council's Traffic Team is also sent, Development Engineering Team would wish to wait for comments from traffic team prior to assessing this application.</p>
Traffic Engineer	<p>Supported - subject to conditions</p> <p>The proposal is for alterations and additions to the existing approved restaurant on the site. The proposal incorporates an increase in the outdoor covered outdoor dining courtyard of some 35m2. This is achieved by the removal of the two existing offstreet parking spaces serving the development. The proposal does not include any increase in seating capacity.</p> <p>Parking impact The removal of two offstreet parking spaces will be offset by the resultant increase in on-street parking supply by one space. The proposed changes will therefore result in a net parking loss of one space. It is noted that parking surveys have demonstrated that approximately half of the restaurant's customers are travelling to the restaurant by means other than private motor vehicle with more than half of those who are travelling by private car doing so as a passenger.</p> <p>It is noted that the 2 offstreet parking spaces provide an area for deliveries by small trucks or vans to the premises and with the removal of these spaces this facility will be lost and to offset this the provision of an on-street Loading Zone may normally be required. It is however noted that Council has recently installed 2 new Loading</p>

Internal Referral Body	Comments
	<p>Zones one directly opposite the premises on the Albert St and another on the west side of Moore Road east of Albert Street. The restaurant is therefore already within close proximity to two Loading Zones and there is not considered to be a need for an additional Loading Zone.</p> <p>The change is considered to have a minimal impact and is not opposed on traffic grounds subject to conditions.</p>
External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
NSW Police - Licensing (Clubs, Hotels, Pubs)	The proposal was referred to NSW Police who provided a response stating that the proposal is acceptable subject to compliance with relevant conditions. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	Complies
Height of Buildings:	11m	3.5m - 4.3m (Awning)	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	N/A
5.20 Standards that cannot be used to refuse consent – playing and performing music	Yes

Warringah Development Control Plan

Built Form Controls

Built Form	Requirement	Proposed	%	Complies
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Control			Variation*	
B2 Number of storeys	3	Unaltered	N/A	Yes
B5 Side Boundary Setbacks	Merit Assessment = (West)	Unaltered	N/A	Yes
	Merit Assessment = (East)	Nil (Enclosed bin area) 1.3m (Courtyard)	N/A	Yes
B7 Front Boundary Setbacks	Ground and first floor maintain street front, second floor up 5m	Aligns with existing street front	N/A	Yes
B9 Rear Boundary Setbacks	6m	Nil (Aligns with existing rear setback)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B2 Number of Storeys	Yes	Yes
B6 Merit Assessment of Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B10 Merit assessment of rear boundary setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	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
D18 Accessibility and Adaptability	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
F1 Local and Neighbourhood Centres	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
1. Built form in Freshwater	Yes	Yes
3. Street activation	Yes	Yes
4. Street facades and shopfront design	Yes	Yes
5. Access and loading	Yes	Yes
6. Lighting	Yes	Yes
7. Safety and security	Yes	Yes
10. Front setback	Yes	Yes
12. Other side and rear setbacks	Yes	Yes
13. Roofs and building form	Yes	Yes
14. Building massing	Yes	Yes
15. Building sustainability	Yes	Yes
16. Materials and colours	Yes	Yes

Detailed Assessment

B6 Merit Assessment of Side Boundary Setbacks

Clause B6 - Merit Assessment of Side Boundary Setbacks stipulates that side boundary setbacks will be determined on a merit basis with regard to streetscape, amenity of surrounding properties, and setbacks of neighbouring development.

The proposed bin area is located on a nil setback to the eastern boundary and the eastern masonry wall of the new courtyard is set back 1.3 metres from the boundary, as demonstrated in Figure 1. below.

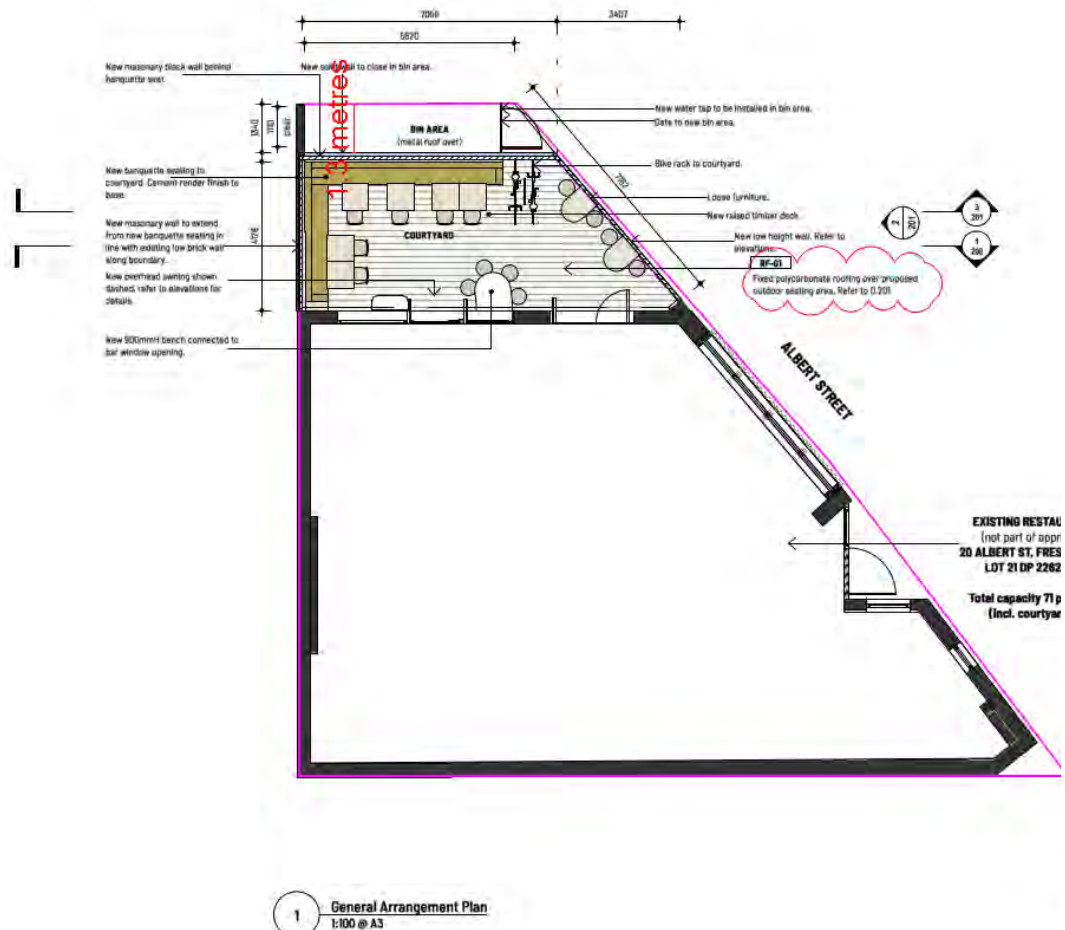


Figure 1. Eastern side setback diagram.

Merit consideration:

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

- To provide ample opportunities for deep soil landscape areas.

Comment:

The subject site is devoid any landscaping and the provision of deep soil areas is not applicable for this Zone.

- To ensure that development does not become visually dominant.

Comment:

The outdoor dining area design maintains an acceptable level of openness through the use of breeze blocks and a fixed, shut polycarbonate roofing system. The proposed outdoor dining

area will enhance the streetscape with the screening of the existing large blank at No.22 Albert Street, creating an improved and more active frontage. Additionally, the removal of the current vehicle crossing will positively impact the overall visual appeal of the streetscape.

- *To ensure that the scale and bulk of buildings is minimised.*

Comment:

The proposed outdoor dining space is located at ground level and does not result in an increase to the height of the existing development. The bulk and scale of the proposal remains consistent with nearby comparable uses.

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

Comment:

The proposal is located at ground level and not considered to have any discernible shadowing impacts. Notwithstanding detailed discussions on the proposal impacts on local amenity (which is found to be consistent with nearby comparable uses.) elsewhere in this report, it is considered that the proposal, subject to the recommended conditions of consent will not give rise to any unacceptable impacts. In this regard, the proposed development is not anticipated to result in any unreasonable overshadowing impacts or loss of amenity to adjoining buildings.

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

Comment:

The proposal will not result in the loss of views.

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.

B10 Merit assessment of rear boundary setbacks

Clause B10 - Merit assessment of rear boundary setbacks prescribes that the rear boundary setback is to be determined on merit with regard to streetscape, amenity of surrounding properties, setbacks of neighbouring development and the objectives of the control.

The proposed courtyard is located on a nil rear setback. Notably, this setback aligns with an existing nil setback for the existing approved restaurant.

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 opportunities for deep soil landscape areas are maintained.*

Comment:

The subject site is devoid any landscaping and the provision of deep soil areas is not

applicable for this Zone.

- *To create a sense of openness in rear yards.*

Comment:

Not applicable. The subject site contains an existing restaurant and adjoins land zoned E1 Local Centre.

- *To preserve the amenity of adjacent land, particularly relating to privacy between buildings.*

Comment:

To maintain the visual privacy of adjacent buildings, the design incorporates masonry walls and a fixed awning above the outdoor dining area. Furthermore, the proposed outdoor dining area is located at ground level and orientated toward Albert Street, ensuring that no private spaces are overlooked.

- *To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.*

Comment:

The adjacent property at the rear of the site has a nil setback at the ground floor level, aligning with the common boundary where the proposed outdoor dining area is proposed. As a result, the proposal aligns with the existing pattern of buildings in the area.

- *To provide opportunities to maintain privacy between dwellings.*

Comment:

The fixed roofing above the outdoor dining area will prevent views into any nearby windows or balconies, and therefore the occupants of the adjoining Nos.22-26 Albert Street will not be unreasonably impacted by any loss of privacy or adverse visual impacts.

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.

C2 Traffic, Access and Safety

Merit consideration

The proposed development involves the removal of the 2 existing on-site car parking spaces to accommodate the new outdoor dining area. The existing off-street parking spaces provide an area for deliveries by small trucks or vans to the premises.

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

- *To minimise traffic hazards.*

Comment:

While the proposed site does not include any provision for vehicle access or loading zones, it is in close proximity to two existing loading zones. These are situated directly opposite the premises on Albert Street and on the west side of Moore Road, east of Albert Street. Additionally, parking surveys indicate that approximately half of the restaurant's patrons use alternative means of transportation, and more than half of those arriving by private car are passengers. Council's Traffic Engineer has evaluated the proposed development and determined that there is no necessity for an additional loading zone or off-street parking. Therefore, the proposal is not expected to significantly impact the surrounding traffic and road network.

- *To minimise vehicles queuing on public roads.*

Comment:

The proposal has been referred to Council's Traffic Engineer who has not raised any concerns regarding an increase in vehicle queueing on public roads as a result of the proposed development.

- *To minimise the number of vehicle crossings in a street.*

Comment:

No additional vehicle crossings are proposed as part of the proposed development.

- *To minimise traffic, pedestrian and cyclist conflict.*

Comment:

As above, the proposal is not anticipated to result in any traffic, pedestrian and cyclist conflict.

- *To minimise interference with public transport facilities.*

Comment:

The application is supported by a Traffic and Parking Impact Assessment, which asserts that the site has suitable access to public transport facilities. According to the parking survey, there is an equal distribution between private car use and other travel modes, demonstrating a balanced 50:50 split. Moreover, the proposed development is not expected to disrupt any existing public transport routes or facilities.

- *To minimise the loss of "on street" kerbside parking.*

Comment:

The removal of the existing driveway allows for an additional kerbside parking space. Moreover, the design of the outdoor dining space has incorporated a bike rack to the courtyard to encourage more active forms of transport to the site and reduce the necessity of additional parking.

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.

C3 Parking Facilities

Merit consideration

The development proposes to remove the driveway and two on-site car parking spaces to accommodate the proposed outdoor dining courtyard. With the removal of the driveway, the kerb length increases to allow an additional parking space at all times on Albert Street.

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

- *To provide adequate off street carparking.*

Comment:

The proposal has been referred to Council's Traffic Engineer who has not raised any concerns regarding off-street parking, given the site's proximity to nearby loading zones and access to public transport.

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

Comment:

The current proposal involves converting the existing on-site parking facilities into an outdoor dining area, which will complement the area and assist in enhancing the role of freshwater Village as the centre for the local community. The proposed replacement of the existing car parking spaces and vehicle crossover will enhance the streetscape whilst providing for an active street frontage.

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

Comment:

As the proposal involves the removal of the existing on-site parking, it will not result in parking facilities dominating the streetscape or other public spaces.

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.

D3 Noise

Merit consideration

The proposed outdoor dining can be considered a noise generating activity.

The application is supported by an Acoustic Impact Assessment from Pulse White Noise Acoustics dated 12 July 2022 as well as an addendum to the report dated 8 December 2022.

For an improved acoustic outcome, this development application includes an amendment to the plans refused under DA2022/1320 by Council's Development Determination Panel (DDP), which replaces the previously proposed retractable fabric awning with a fixed polycarbonate roofing system.

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

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

Comment:

The primary change to the proposed roofing system relates to the material; that is, the location, extent, and angle of the awning remain consistent with the previous proposal. The roof system shall cover the entire outdoor seating area and retain the ability to meet the recommendations set out in the Acoustic Assessment (dated 12 July 2022).

Furthermore, the application has been referred to Council's Environmental Health (Industrial) Officer who supports the new proposal, subject to recommended conditions of consent including an acoustic review following operation of the proposed works to determine if the assumptions and calculations of the Acoustic Report are accurate and any necessary adjustments to design or operation required to achieve compliance being undertaken. NSW Police has also reviewed the application and found the proposal to be supportable, subject to additional noise-related conditions.

Therefore, the proposal as conditioned will satisfy the objectives of the control.

- *To ensure that noise emission does not unreasonably diminish the amenity of the area or result in noise intrusion which would be unreasonable for occupants, users or visitors.*

Comment:

The site falls within the B2 Local Centre zone and Freshwater Village, which is surrounded by other commercial noise generating activities and is not considered to diminish the amenity of the area. The Plan of Management and the recommendations included in the Acoustic Assessment Report will be included as conditions of consent to ensure the development does not result in unreasonable noise for occupants, users or visitors. Furthermore, as previously discussed in this report, no increase in the approved patron numbers is proposed. The restaurant will maintain the existing approved patron capacity of 71 people, with 51 seated inside and 20 in the proposed outdoor area. As there is no increase in seating, any potential noise impacts are manageable in this instance.

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.

D8 Privacy

Merit consideration

The proposed outdoor area is located within proximity of an existing bedroom balcony of a residential unit at No. 18 Albert Street. In addition, the received submissions have raised privacy as a concern.

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

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

Comment:

The proposed outdoor dining area is located at ground level approximately 5.0 metres below the nearest residential balcony. In addition, this balcony is not directly above the proposal, as it is located to the west of the courtyard and largely overlooks the roof of the existing restaurant towards Albert Street. Notwithstanding, the proposal has been designed to include a fixed polycarbonate awning above the outdoor dining area, which provide acoustic protection, while reasonably preventing clear and direct views to the above balcony. Moreover, the proposed hours of operation for the outdoor dining area are restricted to the following:

- *Monday to Thursday: 12.00pm - 8:00pm
- *Friday and Saturday: 12.00pm - 10:00pm
- *Sunday and Public Holidays: 12.00pm - 8:00pm

Overall, the proposal as conditioned will provide a high level of visual and acoustic privacy for occupants and neighbours.

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

Comment:

The Acoustic Report dated 12 July 2022 as well as an addendum to the report dated 8 December 2022 that accompanies the application demonstrates that the proposed design of the outdoor dining area will preserve aural privacy. The proposal is considered an improvement to the appearance of the existing large wall adjoining No.22 Albert Street that presents to the streetscape. As such, the proposal will enhance the presentation of the subject site within the urban environment and will provide a more active frontage in keeping with the character of Freshwater Village.

- *To provide personal and property security for occupants and visitors.*

Comment:

The proposal will improve casual surveillance of Albert Street and the surrounding pedestrian area. The application has been referred to NSW Police who found the proposal to be supportable subject to conditions including the requirement to install closed-circuit television (CCTV), which will ensure personal and property security will be maintained.

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 \$ 735 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 147,000.

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;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

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

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

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

PLANNING CONCLUSION

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 Council as the consent authority grant Development Consent to DA2023/0782 for Alterations and additions to existing restaurant and increase in hours of operation on land at Lot 21 DP 226287, 20 Albert Street, FRESHWATER, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA.101 - Issue B: General Arrangement Plan	8 December 2022	Five Foot One Design
DA.200 - Issue B: Section - Courtyard West	8 December 2022	Five Foot One Design
DA.201 - Issue B: Section - Courtyard North & East	8 December 2022	Five Foot One Design
DA.300 - Issue B: Finishes	8 December 2022	Five Foot One Design

Engineering Plans		
Drawing No.	Dated	Prepared By
Sheet 2 - Rev A: Component Details	12 November 2020	Dan Pal Australia
Sheet 3 - Rev A: Cross Section Details	12 November 2020	Dan Pal Australia
Sheet 4 - Rev A: Longitudinal Section Details	12 November 2020	Dan Pal Australia

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By

Acoustic Assessment - Final (Rev 8)	12 July 2022	Pulse White Noise Acoustics
BCA Assessment Report - C22264-BCA2019-r2	24 March 2023	Credwell Consulting
Plan of Management	9 August 2023	Alma Freshwater
Traffic & Parking Impact Assessment - Rev B	12 July 2022	Traffic & Safety Solutions

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	8 July 2021	Jack Michael Leary

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	30 June 2023
NSW Police Force	NSW Police Force Referral Response	3 August 2023

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

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

3. **Prescribed Conditions**

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

- (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.
- Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

4. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished

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

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

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

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

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

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

5. **Acoustic Review**

Within 30 days from the operations commencing under the terms of this consent, an acoustic review of the findings and recommendations of Pulse White Noise Acoustic (12 July 2022), including the amended roof design, and any additional requirements at OC acoustic review stage; shall be carried out on site (during a busy period of trading such as a Friday or Saturday

night). Any necessary actions to obtain acoustic compliance, shall be completed within a further 30 days of the required assessment. The report associated with the compliance testing and any works or requirements is to then be furnished to Council for its records.

Reason: To ensure acoustic compliance in an operational situation.

6. Plan of Management

The requirements of the Plan of Management are to be complied with and also upgraded to reflect any recommendations of the required additional operating acoustic review, based on the report by Pulse White Noise Acoustic 12 July 2022 (and further review 8 December 2022).

A copy of the plan is to be kept on site, updated with responsible staff documented for tasks such as music sound levels, occupant numbers, door/window closure, management of exiting patrons and maintenance contracts of equipment such as the kitchen exhaust and acoustic seals.

Reason: To ensure management of potential noise issues and that they are effectively dealt with ongoing.

7. Patron Capacity

The maximum patron capacity for the restaurant shall be 71 patrons. The maximum patron capacity for the outdoor dining area shall be 20 patrons. All patrons must be seated.

Reason: To protect the amenity of nearby residential sites and reduce parking demand within Freshwater Village.

FEES / CHARGES / CONTRIBUTIONS

8. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$735.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$147,000.00.

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

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

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

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

9. Security Bond

A bond (determined from cost of works) of \$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

10. **Polycarbonate Roofing**

The Polycarbonate Roofing System is to comply with F3D2 of the National Construction Code and is to be designed and installed in accordance with AS/NZS 1562.1. Where this is not possible, it is to be supported by a Performance Solution.

Reason: To ensure adequate provision is made for health, amenity and occupant safety.

11. **Removal of Redundant Driveways**

All redundant driveways shall be removed and reinstated to Council standard kerb and gutter. Parking bay markings throughout the indented parking bay fronting No.20 Albert St shall also be remarked. Suitably prepared plans shall be submitted for an approval under the Roads Act and approved by Council prior to the issue of the Construction Certificate. All costs associated with the works shall be borne by the applicant.

A plan checking fee (amount to be advised) and lodgement of a performance bond may be required from the applicant prior to the release of the approval.

Reason: To maximise on street car parking by removing driveways that are no longer needed in accordance with Council policy.

12. **Building Code of Australia Fire Safety Requirements**

The Building Code of Australia fire safety requirements for the building as detailed and recommended in the BCA Assessment Report prepared by CREDWELL, dated 24/3/2023, Ref No. C22264-BCA-R2, including any required Performance Reviews, are to be considered as part of the assessment for any Construction Certificate. Details demonstrating compliance are to be provided to the Certifying Authority, prior to the issue of a Construction Certificate.

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

13. Access for People with Disabilities

Access to and within the building is to be provided for Persons with a Disability as required by the Building Code of Australia and AS1428. Details are to be provided to the Certifying Authority prior to the issue of the Construction Certificate and be implemented prior to occupation of the building.

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

14. Compliance with Standards

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

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

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

15. 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.

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. Work Zones and Permits**

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

A separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane and a Roads and Maritime Services Work Zone Permit shall be obtained for State Roads.

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

DURING BUILDING WORK

18. **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.

19. **Survey Certificate**

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

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

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

20. **Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

21. **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.

22. **Reinstatement of Kerb**

The Applicant shall reinstate all redundant laybacks and vehicular crossings to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant.

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

Reason: To facilitate the preservation of on street parking spaces.

23. **Garbage and Recycling Facilities**

All internal walls of the storage area shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

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

Reason: To prevent pollution of the environment and to protect the amenity of the area.

24. **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

25. **Acoustic Requirements - On-going**

Compliance with the recommendations within the Acoustic Assessment by Pulse White Noise Acoustic dated 12 July 2022, as amended, and updated in an ongoing manner.

Reason: To prevent a noise nuisance to any neighbouring residential receiver.

26. **Proposed Outdoor Dining Condition**

No outdoor dining beyond the property boundaries is approved in this consent. Any proposed outdoor dining must be consistent with State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

Any outdoor dining that is consistent with the SEPP shall be the subject of a separate Outdoor Dining Application to Council's Property team.

Reason: To ensure that outdoor dining is assessed and approved under the appropriate regulatory framework and legislation.

27. **Hours of Operation**

The hours of operation are to be restricted to:

Indoor Seating Area

- Monday to Saturday: 12.00pm - 12.00am
- Sunday and Public Holidays: 12.00pm - 10:00pm

Outdoor Seating Area

- Monday to Thursday: 12.00pm - 8:00pm
- Friday and Saturday: 12.00pm - 10:00pm
- Sunday and Public Holidays: 12.00pm - 8:00pm

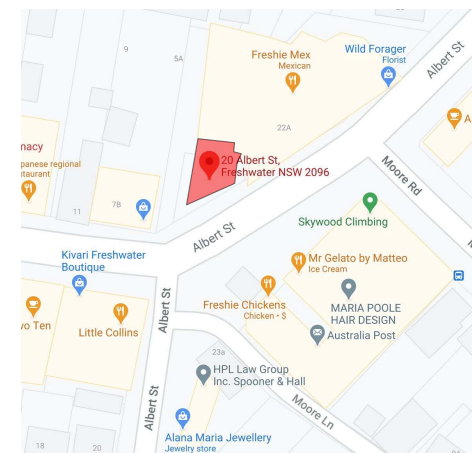
Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

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

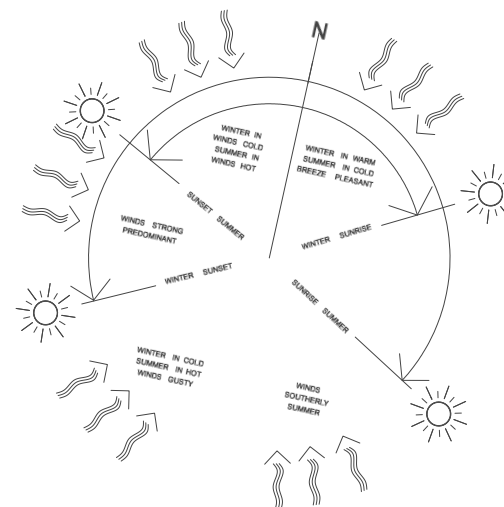
28. **Commercial Waste Collection**

Waste and recyclable material, generated by this premises, must not be collected between the hours of 10pm and 6am on any day.

Reason: To protect the acoustic amenity of surrounding properties.



2 Location plan
NTS



1 Site Plan
1:100 @ A3



FiveFootOne

A: 60 Atchison Street, St Leonards
NSW 2065
T: 0422 757 883
E: kate@fivefootone-designs.com

2036
St. Alma Freshwater - Courtyard

20 Albert Street
Freshwater
NSW 2086
Jack Leary + Tim Christensen

NOTES

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It is agreed that:

- no scale drawings, using figured dimensions only, verify all dimensions on site;
- As it works to be in accordance with the building code of Australia (AS/NZS Australian standards (AS) and relevant authorities' requirements;
- Any discrepancies, dimensional variations or omissions in the need for clarification must be reported to Five Foot One Design & relevant consultants immediately;
- The drawings to be read with all associated Five Foot One Design project documentation, including specifications, schedules, drawings and reports;
- All areas listed & calculations are preliminary & indicative only and subject to detailed & further survey, design & client and consultant input and advice.

ISSUE	DATE	AMENDMENT
A	08/5/22	FOR DA ISSUE

DRAINING NO.

DA.001

Existing Site Plan

DATE: 06.06.22

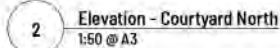
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REVISION

A

FOR DA



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 A Division of
FLUKE
 10000 North 26th Avenue
 Denver, CO 80238
 303.440.8800
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WA 6160
Jack Lundy + Tim Christensen

NOTES

(b) Five Foot One Design
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On not scale drawings, used fixed dimensions only verify all dimensions on site.

- All works to be in accordance with the building code of australia (BCA) Australian standards (AS), and relevant authorities requirements.

Any discrepancies, dimensional inconsistencies or the need for clarification must be reported to Five Foot One Design & relevant consultants

- This drawing is to be read with all associated Five Foot One Design project documentation, including specifications, schedules, drawings & details.

All areas yields & calculations are preliminary & indicative only and subject to detailed & further survey, design & client and consultant input & advice.

NAME	DATE	AMOUNT
A	1/1/22	100.00
B	1/1/22	100.00

CONCLUSIONS

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DATE: 8.8.77

SCALE	180043
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R

FOR APPROVAL

ITEM 3.3	DA2023/1001 - 72 ADDISON ROAD MANLY - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Rod Piggott
TRIM FILE REF	2023/749021
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations 3 ↓ Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2023/1001 for alterations and additions to a dwelling house on land at Lot 1 DP 72778, 72 Addison Road MANLY, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/1001
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Responsible Officer:	Clare Costanzo
Land to be developed (Address):	Lot 1 DP 72778, 72 Addison Road MANLY NSW 2095
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Erryn Elvie Patterson
Applicant:	Erryn Elvie Patterson

Application Lodged:	02/08/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	08/08/2023 to 22/08/2023
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.3 Height of buildings: 18.8% 4.4 Floor space ratio: 7%
Recommendation:	Approval

Estimated Cost of Works:	\$ 715,000.00
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EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) due to an 18% variation to the height of buildings control under the Manly Local Environmental Plan 2013.

One objection was received by a neighboring property directly adjoining the site to the east. Concerns raised in the objections predominantly relate to the large variation to the controls, visual impact, heritage impact, design, privacy and use.

The 4.6 request for the non-compliance with height standard arises as a result of the sloping

topography of the site. The proposed new roof results in the non compliant building height of 10.1m for a section of the building approximately 8m in length. The remainder of the building is under the 8.5m height control.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal comprises of alterations and additions to an existing dwelling house. The following works are proposed:

Ground Floor

- Minor demolition works and reconfiguration

First Floor

- Construction of a new master bedroom ensuite and dressing room with new open balcony to Addison Road frontage
- Construction of a new study and a bedroom with an ensuite, robe and balcony

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Development Control Plan - 3.1 Streetscapes and Townscapes

Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.7 First Floor and Roof Additions

SITE DESCRIPTION

Property Description:	Lot 1 DP 72778 , 72 Addison Road MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one (1) corner allotment located on the south eastern side of Addison Road and the north eastern side of Stuart street.</p> <p>The site is regular in shape with a primary frontage of 10.49m along to Addison Road and a secondary frontage of 42.06m to Stuart Street. The north eastern and south eastern side boundaries measure 43.06m and 10.49m respectively. The site has a surveyed area of 436.3m².</p> <p>The site is located within the R1 General Residential zone and accommodates a part two storey brick dwelling with a tile roof. Vehicular access is obtained at the south eastern corner of Stuart Street. The vehicular access also forms a right of carriageway over the site for the adjoining property at 74 Addison Road.</p> <p>The site has a fall of approximately 5m from the Addison Road frontage to the south western corner of the site.</p> <p>Outdoor recreation areas and gardens are predominantly on elevated areas above the garage. The site has some small trees and vegetation within garden beds and within the rear yard. There are larger trees within the road reserve.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by one and two storey dwelling houses and residential flat buildings up to eight storeys.</p>

Map:



SITE HISTORY

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

- Prelodgement Meeting PLM2022/0116 was held for the demolition of attic and construction of first floor additions on the 30 June 2022.

Application History

Following preliminary assessment of the application Council recommended amendments to the application. The applicant responded by providing amended plans and additional information. The plans did not require renotification in accordance with the Northern Beaches Council Community Participation Plan. In addition a courtesy email was also sent to the objector advising of the amended plans.

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 Matters for Consideration	Comments
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended plans and stormwater management.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Lindsey Dey Planning	4 Edwin Street CAMMERAY NSW 2062
Lindsey Dey	4 Edwin Street CAMMERAY NSW 2062

The following issues were raised in the submissions:

- **Variation to development standards**

The submissions raised concerns that the proposed development does not meet the objectives of the Local Environmental Plan and therefore the variation to the building height and floor space ratio should not be supported.

Comment:

The applicant provided a clause 4.6 written request to vary a development standard in support of the height of buildings and floor space ratio breaches. A merit assessment has been conducted under 4.6 Exemptions to development standards of this assessment report. See this section for further discussion.

- **Excessive wall height and lack of side boundary setbacks**

The submissions raised concerns that the works will result in a massive, bulky building that is not acceptable on a prominent street corner.

Comment:

The proposal has been assessed against the relevant built form controls, including wall height



and side boundary setback within this assessment report. See 4.1.2 Height of Buildings (incorporating wall height, number of storeys and roof height) and 4.1.4 Setbacks (front, side and rear) and building separation.

- **Visual Impact**

The submissions raised concerns that the proposed development does not retain the currently compatible visual relationship with the adjoining dwelling and the public domain. The submission also raised concern that the lack of side boundary setback in the proposed development constrains the view of no. 74

from the streets and footpaths to the east, west and south, particularly its handsome and generous timber front verandah on Addison Road.

Comment:

The applications compatibility with the streetscape has been addressed within this report under 3.1 Streetscapes and Townscapes. In addition a merit assessment against the side boundary setbacks has been conducted under 4.1.4 Setbacks (front, side and rear) and building separation.

- **Heritage Impact**

The submissions raised concerns that the proposed development would have a significant negative impact on the surrounding neighbourhood and streetscape, including several heritage items in the vicinity of the property i.e. I70, I71, I75 and I260 as well as kerbs and street trees along Addison Road immediately south.

Comment:

Following preliminary assessment of the application some concerns were raised by Council's Heritage Officer. The applicant responded by providing amended plans addressing the concerns raised. More information can be found within the heritage referral within this assessment report.

- **Design**

The submissions raised concerns that an alternate design with compliant wall heights and side boundary setbacks would result in a better outcome for enhancing the streetscape.

Comment:

The applications compatibility with the streetscape has been addressed within this report under 3.1 Streetscapes and Townscapes. The application in its current form is considered to be compatible with the existing streetscape and the elevations of the dwelling fronting Addison Road and Stuart Street are appropriately setback and articulated to address the corner frontage.

- **Privacy**

The submissions raised concerns that the proposed stairwell on the northeastern elevation of the property is large, covers both levels and comprises of clear glass and as such will result in a significant amount of overlooking.

Comment:

There is no large stairwell opening along the north eastern elevation and therefore no privacy impacts are anticipated. There is one new small highlight window along the north eastern elevation adjoining 74 Addison Road. However given the window sill is 2.3m above the finished floor level it is not anticipated there will be any privacy concerns.

- **Use of roof cavity**

The submissions raised concerns that the roof cavity is excessive and concern is raised that this larger space has potential for future inhabitation and as such should be counted as floor space.

Comment:

The roof cavity generally has a floor to ceiling height of less than 2.4m and therefore unable to be used as habitable floor space. For the avoidance of being used as a habitable space a condition has been recommended as part of the development consent.

Application History

Following preliminary assessment of the application Council raised some issues with the applicant in regard to stormwater, heritage and amended plans. The applicant responded by providing additional information and amended plans. The amended plans did not require formal renotification in accordance with the Northern Beaches Community Participation Plan. However, a courtesy email advising of amended plans was extended to the neighbouring property at 74 Addison Road who had previously placed a submission. The neighbouring property responded to the amended plans with an additional submission which has also been addressed within this assessment report.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The application seeks consent for alterations and additions to a dwelling house.</p> <p>The plans and SEE indicate that no significant landscape features are affected by the proposed works. No trees are to be removed.</p> <p>No objections are raised with regard to landscape issues subject to conditions.</p>
NECC (Bushland and Biodiversity)	<p>The proposal seeks approval for alterations and additions to a single dwelling.</p> <p>The comments in this referral relate to the following applicable controls and provisions:</p> <ul style="list-style-type: none"> • Manly LEP - Clause 6.5 Terrestrial Biodiversity <p>The subject site is located within declared habitat for the endangered population of Long-nosed Bandicoots at North Head. As such, a</p>

Internal Referral Body	Comments
	<p>threatened species test of significance ('five part test') is required to be completed in accordance with s7.3 of the BC Act. This assessment has been undertaken and has concluded that the proposal will not result in a significant impact to the endangered population.</p> <p>No native vegetation or fauna habitat would be impacted, the development is designed, sited and will be managed to avoid any significant adverse environmental impact.</p>
NECC (Development Engineering)	<p>The proposed development is in Zone 1 of Region 3 where on site detention is required. The submission has not addressed the requirement for on site detention as part of the proposed development. Section 9.3.3.2 of the <i>Water Management for Development Policy Version 2 26 February 2021</i> is reproduced below for your information.</p> <p>9.3.3.2 Requirements for Region 3 – Zone 1 – On-Site Detention Sites within Zone 1 shall require the installation of OSD facilities to control the rate of runoff from the site due to the development, such that the runoff after development shall be less than the runoff prior to the development. Runoff from the developed site shall be reduced to a quantity with an impervious portion of 35% or less. Within Zone 1, an OSD system shall be required for all proposed developments, re-developments or new land subdivisions ('greenfields' subdivisions where the condition of the site is currently 'state of nature'), except where:</p> <ul style="list-style-type: none"> a) The development is a one-off extension or an addition, involving an increase in impervious area of less than 50m² and the total existing impervious areas of the site does not exceed 35% b) The developed site will have a total impervious percentage or area of no more than 35% or 250m², whichever is the lessor, unless it is a new allotment created from a 'greenfields' subdivision. An OSD system shall be required for any development on 'Greenfields' subdivisions, including those allotments in Boronia Lane North, Boronia Lane South, Boronia Lane West and Castle Circuit, Seaforth that were part of a land release by the State Government c) The applicant can demonstrate to Council's satisfaction that the site is currently within a flood- affected zone, and that the application of an OSD system at the subject site would be of no benefit in reducing the adverse flooding impacts d) An alternative method of stormwater disposal, such as an absorption system, is used – however the design of the on-site absorption system must be supported by soil data and appropriate calculations (refer to Appendix 3 for guidelines). <p>Council may require an alternative method of stormwater disposal such as source control (e.g. on-site absorption) or source control used in combination with another form of detention.</p>

Internal Referral Body	Comments
	<p>Engineering Comments 23.09.2023</p> <p>The application of an OSD system at the subject site would be of no benefit in reducing the adverse flooding impacts. I have no further objections to the proposed development subject to the recommended engineering conditions of consent.</p>
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	<p>The proposal has been referred to Heritage as the subject site adjoins heritage listed street trees and in the vicinity of a heritage item:</p> <p>Item I76 - Street trees - Addison Road (from Bruce Avenue to Reddall Street)</p> <p>Item I71 - House - 78 Addison Road, Manly</p>
	Details of heritage items affected
	<p>Details of the items as contained in the heritage inventory:</p> <p>Item I76 - Street trees <u>Statement of Significance</u> Permanent mature street planting of late 19th century and early 20th century (from Bruce Avenue to Reddall Street) <u>Physical Description</u> Mixture of species planted in carriageway; includes Norfolk Island Pines, Port Jackson Figs, Ficus Hilli.</p> <p>Item I71 - House <u>Statement of Significance</u> 78 Addison Road, Manly, also known as 'Binna Burra'. The building is able to clearly demonstrate the Federation Arts and Crafts Style which is not a predominant surviving style within the Manly Area. The building have undergone significant alteration in order to divide it into separate apartments and the addition of additional dwellings in the early 1980s, however, the building is still able to demonstrate its aesthetic, rarity and representative significance via the remnant external fabric and architectural detailing. 'Binna Burra' is important to the Manly area for its historic, aesthetic, rarity and representative heritage significance. It is further considered that additional research is required to determine whether the building has potential associated significance with architect Roscoe Collins. <u>Physical Description</u> The site, comprising a single lot addressing Addison Road. The street boundary is defined by a timber picket fence, set on a low stone wall. The centre of the boundary is broken by a timber pedestrian gate leading to the front of the original dwelling. Access to the 1980s additions is gained via a break in the front fence to</p>

Internal Referral Body	Comments		
	<p>the western boundary of the site.</p> <p>The existing structure comprises a two-storey Federation era dwelling consistent with the Arts and Craft style. The building is constructed of distinct polychrome brickwork and demonstrates the following key indicators of the style:</p> <ul style="list-style-type: none">• Conspicuous roof,• Mitred hip (to ground floor verandah bay)• Prominent eaves with exposed rafters• Upper gable infill• Prominent gable verge• Eave bracket• Roughcast walling• Contrasting colours and textures• Large arch• bay <p>The building is also noted as having a recessed verandah to both ground and first floor of the principal elevation. The side elevations of the building are also noted as retaining original detailing.</p>		
	Other relevant heritage listings		
	SEPP (Biodiversity and Conservation) 2021	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	N/A	
	Consideration of Application		
	<p>The proposal seeks consent for alterations and additions to the existing dwelling including a first floor addition to replace the existing attic at the main street frontage. The existing property is not a listed heritage item, however it dates back to the early 20th century and still retains the original mass and the main roofline at the street frontages. The front elevation of the single level cottage has been proposed to change to a two storey dwelling. In the Pre Lodgement meeting, Heritage had recommended the applicant to consider to retain the existing street presentation, which is considered to be possible at the Stuart Street elevation. The external wall facing Stuart Street is required to remain behind the existing chimney along with the retention of a small portion of the existing roof. This small recess from the Stuart Street facade at the front portion of the first floor addition (in the proposed master bedroom) will allow the existing presentation of the Stuart Street facade including the original roof line to be retained, which will</p>		

Internal Referral Body	Comments
	<p>allow the interpretation of the original cottage's facade within the existing streetscape.</p> <p>Revised comments - 09 October 2023</p> <p>Amended drawings, received on 29 September 2023, with a recess to the upper level roof line, provide an improved visual impact to the appearance of the proposed first floor addition along Stuart Street. However, Heritage still have concerns regarding the gabled roof above the master bedroom. It is considered that a hip roof form, instead of the proposed gable, would be a better response to the existing building and the streetscape.</p> <p>Therefore, no objections are raised on heritage grounds subject to one condition.</p> <p><u>Consider against the provisions of CL5.10 of Manly LEP 2013.</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes</p>

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. A500249 dated 20 June 2023).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 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	10.1m	18.8% (1.6m)	No

Floor Space Ratio	FSR:0.6:1 (261.78m ²)	FSR: 0.64:1 (281.6m ²)	7% (19.82m ²)	No
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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
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings and Floor space ratio
Requirement:	8.5m / 0.60:1 (261.78m ²)
Proposed:	10.1m / 0.64:1 (281.6m ²)
Percentage variation to requirement:	18.8% / 7%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 – Height of Buildings and Clause 4.4 - Floor space ratio development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

Clause 4.6 Exceptions to development standards:

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

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



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

Comment:

Clause 4.3 – Height of Buildings and Clause 4.4 - Floor space ratio development standard is not expressly excluded from the operation of this clause.

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

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

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

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

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

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

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

Comment:

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

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

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

Comment:

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ

provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

Height of Buildings

The portion of the proposed works which exceeds the development standard is the centrally located roof ridge, which breaches the limit as the land falls away to the north east underneath the dwelling. The environmental planning grounds that justify the exceedance of the development standard are as follows:

Fall of the land

- The nature of the topography at 72 Addison Road is a primary reason the roof breaches the height limit. The fall from north west to south east along the site, together with ground level changes across the site under the building results in a complying roof form at the north eastern end of the dwelling, but becoming noncompliant as the land falls away towards the south east.

Retention of existing structure



- The existing floor levels at the ground and upper level are to be retained, and the floor to ceiling space in the new master bedroom, bathroom and robe has been kept to the minimum required 2.4m
- The height of the roof form is a function of utilising the existing floor levels and the width of existing structure, together with achieving a consistency of roof form with the era of the original dwelling, and those of nearby dwellings.

Overall lesser height in the locality

- Aside from the single storey dwelling at 10 Stuart Street, the dwelling as proposed will remain the lowest building form within the streetscape of the Addison Road/Stuart Street intersection. Importantly, dwellings and attached dwellings to the north east in Addison Road will remain of a significantly greater scale and the proposed additions will remain subservient to these building forms and the many RFB's that otherwise surround it.

Absence of impact

- The non-compliance roof form has been minimised in its perceived impact through its centralised location, and does not result in privacy issues or unreasonable overshadowing. The first floor addition will remain within a context of landscaping and canopy and no view loss is anticipated as a result of this and its spatial separation from surrounding elevated dwellings.

Floor Space Ratio

The proposed works which contribute to the exceedance of the development standard is the additional floor space at the new first level. The environmental planning grounds that justify the exceedance of the development standard are as follows:

Character and Context

- The predominant form within the immediate vicinity is residential flat buildings (RFB's), of which two of the four corner sites are RFB's. The RFB's nearby are predominantly 3 storey but also include up to 8 storeys. Single storey dwellings such as on the subject site are vastly in the minority in relation to building form. Within 100m radius of the site only three other dwellings present to the street as single storey. All other single dwellings are two or more storeys in height.
- With respect to the immediate street scape on Addison Road, the group of buildings immediately to the north east generally present much greater bulk to the street. This is particularly apparent by comparing No.s 74 and 76 Addison Road with the proposed design at 72 Addison Road.
- A comparative analysis of bulk and scale in the streetscape clearly demonstrates that the proposed first floor addition at the subject site is significantly less bulky as it presents to Addison Road by virtue of its overall reduced height - 1.6m lower than adjoining No 74 Addison Road - and also its narrow width.

Roof form and existing attic space



- The proposed additional floor space is partly located where the existing dwelling's attic space currently is, such that the new floor space will not appear as being an entire additional floor when compared to existing.

Absence of impact

- Overall, it has been demonstrated that the additional floor space will have little to no impact upon neighbours or the character of the locality.

Council has reviewed the applicants written request and agrees that the applicant has made the following valid justifications for variation of the height of buildings and floor space ratio control:

- The proposed works are compatible with the existing character of the surrounding locality and is generally a lesser bulk and scale than the existing development within the immediate vicinity
- The works are not expected to have unreasonable amenity impacts given the context of the site within a residential environment
- The sloping topography of the site contributes to the height of buildings non compliance.

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 and Floor Space Ratio development standard and the objectives of the R1 General Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – '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 prevailing height of buildings in the immediate locality is in excess of the height limits within both the LEP and DCP. Nonetheless, the proposed additions to 72 Addison Road are mostly compliant and exceed compliance to a large extent.

The exceedance of the height limit for a small portion of the roof allows the pitched roof form, which is characteristic of the immediate locality and consistent with the style of the original dwelling.

b) to control the bulk and scale of buildings,

Comment:

The proposed additions are well below the height of the neighbouring single dwelling as demonstrated in the below elevation, and of significantly lesser scale than the surrounding flat buildings.

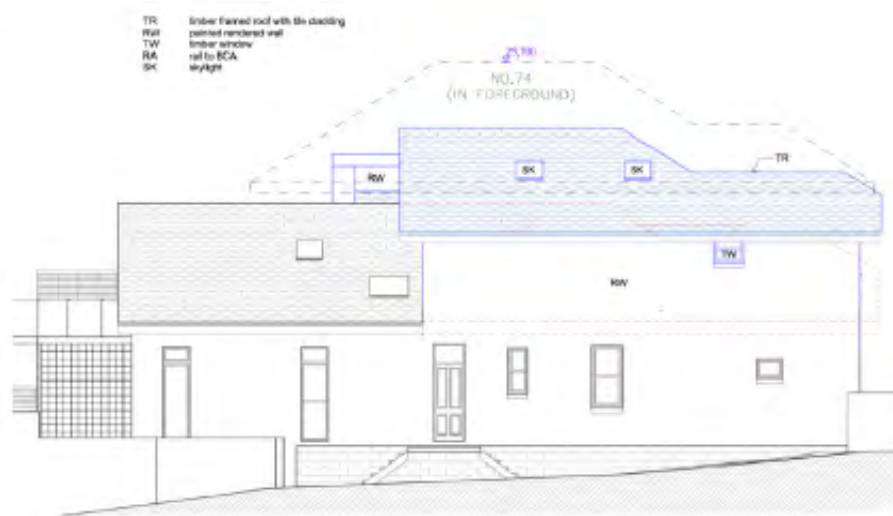


Figure: North east elevation showing the additional height of the adjoining dwelling No 74 Addison Road Source: Northern Beaches Drafting.

Additionally, the scale of the ridge is minimised by its central location in the roof form and on the site generally. This maximises the distance from where the highest point is viewed from, lessening the perception of scale. Scale is also minimised in the design through the stepping of the roof form and floor plate of the upper level.

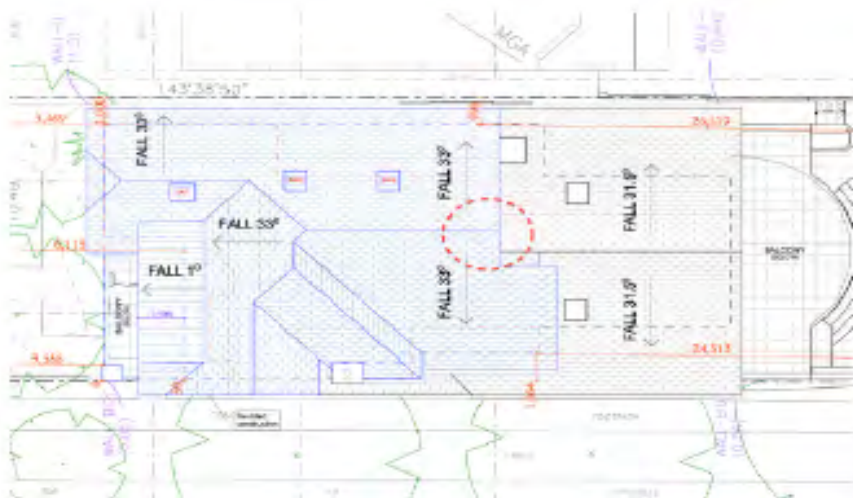


Figure: The central location of the breaching roof element (dashed red) lessens its impact as viewed from neighbouring and nearby dwellings, and from the public domain Source: Northern Beaches Drafting, annotated by Blackwattle Planning

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 site is located a significant distance from the Harbour and foreshore area and the new roof form will be unobtrusive in the visual catchment from the Harbour. Views both to and from Addison Road to the harbour will have no adverse impact as a result of the proposal because the site is located well below most other buildings in the vicinity. The proposed additions will remain below the canopy of street trees on Addison Road and Stuart Street such that the additional roof for will not interrupt view lines.

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:

Due to the north west - south east alignment of the site, and the location of the site on a corner, shadows arising from the roof will largely fall within the shadow footprint of the existing dwelling. Some minimal additional shadow will predominantly fall on the carriageway of Stuart Street. The neighbouring dwelling to the south east remains unaffected for the majority of the midwinter day and the road system provides additional spatial separation to other properties to the south west, ensuring they are not unreasonably affected by overshadowing despite the height breach.

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 located within the R1 General Residential zone which is not an environmental protection zone and strictly this objective is not relevant. Notwithstanding, the height of the structures proposed are a result of the fall in the land together with the retention of the existing ground and first floor levels. No site disturbance is proposed, and no conflict arises with vegetation, topography or the surrounding land uses.

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

Comment:

The site does not fall within a heritage conservation area. Vegetation will continue to be a dominant visual characteristic of the locality as viewed from the surrounding locality. Despite the non-compliance, there will be no adverse visual impact on any heritage values as a result of the proposal.

Zone objectives

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

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

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

Comment:

The proposal will be consistent with the existing character of adjoining and nearby single dwellings. The proposed first floor addition will sit lower than other dwellings adjoining the site and is complimentary to the character of this locality. In particular, it is similar in style and roof form to (although much lower than) the neighbouring dwelling at No 74 Addison Road. The bulk of the dwelling as viewed from the street is minimal as verandahs at both ground and first floor levels have been incorporated into the design.

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 variation to the permitted fsr does not result in unacceptable bulk on the site, and the density will not change. The additional floorspace is well integrated into the design of the existing dwelling, and much of the additional floor space is proposed in the location of the existing roof space. There are no landscape or townscape features that will be obscured by the proposed additions.

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

Comment:

The works represent a continuation of the design cues of the existing dwelling, and other single dwellings in the immediate vicinity. No site disturbance is proposed, and the dwelling as proposed will remain secondary to the highly landscaped context including the significant canopy with in the rear yard and Stuart Street.

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

Comment:

The proposal does not unreasonably affect the amenity of neighbours as it will not interrupt view lines or result in unreasonable additional shadow impacts. The works will ensure that the dwelling continues to fit comfortably into the architectural style that is characteristic of this pocket of Manly and will have no adverse impact upon the public domain.

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

Comment:

The works will extend the economic and functional like of the dwelling for a family and contribute to support the nearby neighbourhood and business zones.

Zone objectives

The underlying objectives of the R1 General Residential zone are:

- To provide for the housing needs of the community
- To provide for a variety of housing types and densities
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

Comment:

The proposal will continue to provide for the housing needs of the general residential zone through alterations and additions to an existing dwelling. The land use remains unchanged and the works are considered to be compatible with the surrounding zone.

Conclusion:

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

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, 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 and Floor space ratio Development Standard associated with a single dwelling house (Class 1 building).

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 436.3m²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	NE: 7.1m (based on gradient 1:10)	6.8m	N/A	Yes
	SW: 7.1m (based on gradient 1:10)	9.2m	23%	No
4.1.2.3 Roof Height	Height: 2.5m	2.5m	N/A	Yes
	Parapet Height: 0.6m	0.3m	N/A	Yes
	Pitch: maximum 35 degrees	<35 degrees	N/A	No
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	3.5m, consistent with prevailing setback	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	NE: 2.2m (based on wall height)	0.9m (ground and first floor)	60%	No
	Windows: 3m	0.9m	70%	No
	Secondary street frontage: Prevailing setback / 3.5m	0.7m (ground and first), consistent with prevailing setback	80%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (239.9m ²)	30% (129.7m ²)	45%	No
	Open space above ground 25% of total open space	77% (100.3m ²)	68%	No
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	22% (27.97m ²)	38%	No
	2 native trees	2 trees	N/A	Yes
4.1.5.3 Private Open Space	18sqm	<18sqm	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	<50% (no changes)	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces (no changes)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.5 Road Widening and Realignment	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

Detailed Assessment

3.1 Streetscapes and Townscapes

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

Objective 1) To minimise any negative visual impact of walls, fences and carparking on the street frontage.

Comment:

There are no new retaining walls, fences and car parking as part of this application. The additional wall height along the Stuart Street frontage has been appropriately recessed to address the street frontage.

Objective 2) To ensure development generally viewed from the street complements the identified streetscape.

Comment:

Aside from the single storey dwelling at 10 Stuart Street, the dwelling as proposed will remain the lowest building form within the streetscape of the Addison Road/Stuart Street intersection. Importantly, dwellings and attached dwellings to the north east in Addison Road will remain of a significantly greater scale and the proposed additions will remain subservient to these building forms and the many RFB's that otherwise surround it.

The development is considered to be consistent with the existing streetscape and will also sit lower than the adjoining dwelling. The proposal has been designed to retain a similar architectural style to the existing and adjoining dwelling. The proposal incorporates gable ends and pitched roofs, which are predominant building features of the single dwellings within the locality.

Objective 3) To encourage soft landscape alternatives when front fences and walls may not be appropriate.

Comment:

The existing front fencing and walls are retained.

The first floor addition to the dwelling is designed to be contained within the existing footprint of development on the site. The landscaping on this small and narrow site will be retained together with the canopy provided within the rear yard and street scape.

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

3.1.1 Streetscape (Residential areas)

3.1.1.1 Complementary Design and Visual Improvement

a) Development in the streetscape (including buildings, fences and landscaping) should be designed to:

i) complement the predominant building form, distinct building character, building material and finishes and architectural style in the locality.

Comment:

The development is considered to be consistent with the existing streetscape and will also sit lower than the adjoining dwelling. The proposal has been designed to retain a similar architectural style to the existing and adjoining dwelling. The proposal incorporates gable ends and pitched roofs, which are predominant building features of the single dwellings within the locality.

The colours and finishes have been selected to complement the existing dwelling. The choice of materials used is also complementary to the character of the locality.

ii) ensure the bulk and design of development does not detract from the scenic amenity of the area when viewed from surrounding public and private land.

Comment:

The proposed alterations and additions are not expected to detract from the scenic amenity of the area and will be sited below the ridgeline of the adjoining dwelling and canopy trees.

iii) maintain building heights at a compatible scale with adjacent development particularly at the street frontage and building alignment, whilst also having regard to LEP height standard and the controls of this plan concerning wall and roof height and the number of storeys.

Comment:

Although a portion of the dwelling exceeds the height control, it is considered there is sufficient environmental planning grounds to justify the breach. See 4.6 Exemption to development standards within this assessment report for further discussion. The proposed alterations and additions are also expected to generally sit at a lower maximum RL to the adjoining dwelling and dwellings and residential flat buildings within the immediate vicinity.

iv) avoid elevated structures constructed on extended columns that dominate adjoining sites such as elevated open space terraces, pools, driveways and the like.

Comment:

The proposal comprises of a first floor addition and does not propose any new elevated structures on extended columns.

v) address and compliment the built form and style any heritage property in the vicinity to preserve the integrity of the item and its setting.



Comment:

The existing property is not a listed heritage item, however it dates back to the early 20th century and still retains the original mass and the main roofline at the street frontages. The proposal has been reviewed by Council's heritage officer who is supportive of the proposed alterations and additions subject to the recommended condition of consent. This condition has been included as part of the development consent.

vi) visually improve existing streetscapes through innovative design solutions.

Comment:

The dwelling will remain below existing canopy trees and will be generally sited at a lower RL than development on adjoining sites. Through the use of colours and finishes to complement the existing dwelling and character of the locality and articulation along the side boundaries a design has been achieved to respond appropriately to the streetscape.

vii) incorporate building materials and finishes complementing those dominant in the locality. The use of plantation and/or recycled timbers in construction and finishes is encouraged.

Comment:

The building materials and finishes have been selected to complement the existing dwelling and character of the surrounding locality.

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

3.4.1 Sunlight Access and Overshadowing

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

Objective 1) To provide equitable access to light and sunshine.

Comment:

The proposed alterations and additions are not expected to result in any unreasonable increase of overshadowing onto any adjoining sites. Existing overshadowing is mostly over Stuart Street and within the site, with some overshadowing and minor increase in the morning over the residential flat building at 70 Addison Road and the property to the north east at 72 Addison Road.

The new works will not unreasonably overshadow and equitable access to light and sunshine will be maintained.

Objective 2) To allow adequate sunlight to penetrate:

- *private open spaces within the development site; and*
- *private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.*

Comment:

Private open spaces within the subject site and the adjoining sites will maintain an adequate level of solar access and sunshine penetration.

Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:

- *encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and*
- *maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.*

Comment:

The proposal is not expected to result in any unreasonable additional overshadowing. Windows, living rooms and principal outdoor areas of the subject site and the adjoining site will enjoy a compliant level of sunlight in accordance with the Manly DCP.

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

3.4.2 Privacy and Security

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

Objective 1) To minimise loss of privacy to adjacent and nearby development by:

- *appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; and*
- *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

Comment:

New windows along the south western and north eastern elevation have been minimised to ensure no unreasonable overlooking. A new balcony is located overlooking Stuart and Addison Street. This balcony is not expected to result in any privacy issues and will enable casual surveillance of the streetscape.

There is only one new window along the north eastern elevation that adjoins 74 Addison Road. This is a highlight window to the ensuite and is not expected to have any unreasonable privacy impacts.

Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.

Comment:



A high level of privacy will be provided for the subject site and maintained for adjoining sites without compromising access to light and air.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

Neighbourhood security has been encouraged through the design and provision of a balcony.

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

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

Description of non-compliance

Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height) stipulates that walls are not to exceed: 7.1m (based on gradient 1:10) for the northern elevation.

The proposal presents a non-compliant wall height on the south western elevation of 8.1m, representing a variation of 23% to the control. The wall heights along the north eastern elevation comply with the control.

Merit consideration

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

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

4.1.3 Floor Space Ratio (FSR)

The proposal presents a Floor Space Ratio of 0.64:1 (281.6m²) which represents a variation of 7% to the 0.6:1 (261.6m²) FSR requirement.

A detailed assessment of the FSR variation has been undertaken within the section of this report relating to Clause 4.6 of the Manly LEP 2013. In conclusion, the applicant has adequately justified that compliance with the FSR Development Standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the variation.

Furthermore, it is noted that the site is not an 'undersized allotment, as defined by the Manly DCP 2013.

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

Description of non-compliance

4.1.4.2 Side Setbacks and Secondary Street Frontages

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

Based on these requirements, the proposed wall height is as follows:

- North eastern elevation: 6.8 metres

Therefore, the required side setback is:

- North eastern elevation: 2.2 metres

The proposed side setback is:

- North eastern elevation (ground and first floor): 0.9m-2.9m (presents a maximum variation of 70% to the control). The setback and therefore variation to the ground floor remains unchanged.

There are no changes to the south eastern side boundary and therefore no assessment required on the existing non compliance.

The control requires the secondary frontage to be setback to 3.5m or the prevailing setback. The residential flat building on the opposite corner to the site presents a similar setback to the subject dwelling, however there is no general prevailing setback pattern within the area with a variety of lot configurations and setbacks. Nonetheless, a merit assessment will be conducted against the secondary setback against a control of 3.5m.

The proposed south western secondary frontage is:

- 0.7m to the ground level (presents a maximum variation of 80% to the control)
- 0.7m - 1.9m to the first level (presents a maximum variation of 80% to the control)

Windows

This control requires windows to be setback 3.0 metres from the side boundaries. Due to the existing site constraints, any proposed windows will result in a numerical non-compliance to this requirement. One (1) window is proposed along the north eastern elevation on the second floor level which is sited 0.9m metres from the side boundary. This window is sited to an ensuite and will be a small highlight window. As such, there privacy impact arising from this window is considered acceptable. The new windows along the south western elevation will overlook Stuart Street as the site is a corner allotment and are not expected to have any unreasonable privacy impacts given their modest size.

Merit consideration:



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

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

Comment:

The existing ground floor non-compliances are not changing under this development application. The proposed first floor addition, however, results in numerical non-compliances to both the north eastern side boundary and south western secondary frontage. Strict compliance with this control is limited due to the existing site constraints being the existing development on site and the nature of the corner allotment. The proposal when viewed from the streetscape has compatible setbacks with the adjoining sites and will maintain the existing streetscape.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

As detailed above, the additional windows along each elevation are considered to result in a reasonable privacy impact between properties. The proposal will result in overshadowing, generally over Stuart Street and within the existing site. The assessment of the proposal against the requirements of control 3.4.1 Sunlight Access and Overshadowing found that the proposal results in a reasonable level of overshadowing, with consideration of the site constraints and orientation of the subject site and adjoining allotments. Finally, the proposal does not result in any view loss.

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

Comment:

Notwithstanding the proposed non-compliance, the ground floor level side setbacks do not change. Thus allowing for continued site access. Flexibility is required for the construction of a first floor addition given the narrow allotment and site constraints of the corner allotment.

Objective 4) To enhance and maintain natural features by:

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

Comment:

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

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

Comment:

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

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

4.1.5 Open Space and Landscaping

Clause 4.1.5 Open Space and Landscaping, requires at least 55% of the site area to consist of total open space, in this instance 239.9m² and the minimum landscaped area should be 35% of the total open space.

The proposal will maintain an existing non-compliant open space area of 30% or 129.7m² and landscaped area of 22% or 27.27m².

As the proposed works will not alter the existing landscape area and seek to provide additional open space in the form of the new balcony, no further consideration of this control is required for the purpose of this assessment.

4.1.7 First Floor and Roof Additions

Clause 4.1.7 requires first floor additions to complement the architectural style of the ground floor, and where possible, retain existing roof forms. The proposal is compliant with this requirement, in so far as the application proposes a roof form to the alterations and additions that is compatible with the architectural style of the dwelling. The existing roof form to the rear of the site is retained.

The proposal is also compliant with the provisions of this clause that prescribe that alterations and additions to a dwelling may follow the existing ground floor setbacks providing the adjoining properties are not adversely impacted by overshadowing, view loss or privacy issues. The must also retain the existing scale and character of the street and should not degrade the amenity of surrounding residences.

This has been discussed in further detail within 3.1 Streetscapes and Townscapes, 3.4.2 Privacy and Security and 4.1.4 Setbacks (front, side and rear) and Building Separation within this report.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN



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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$7,150 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$715,000.

CONCLUSION

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

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

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

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

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

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.

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

RECOMMENDATION

That Northern Beaches Council as the consent authority permits a contravention of clause 4.3 Height of Building and 4.4 Floor Space Ratio development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2023/1001 for Alterations and additions to a dwelling house on land at Lot 1 DP 72778, 72 Addison Road, MANLY, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

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
DA4	n/a	Garage Floor Plan	Northern Beaches Drafting	15 September 2023
DA5	n/a	Ground Floor Plan	Northern Beaches Drafting	15 September 2023
DA6	n/a	First Floor Plan	Northern Beaches Drafting	15 September 2023
DA7	n/a	Roof Plan	Northern Beaches Drafting	15 September 2023
DA8	n/a	North West Elevation	Northern Beaches Drafting	15 September 2023
DA9	n/a	South East Elevation	Northern Beaches Drafting	15 September 2023

DA10	n/a	South West Elevation	Northern Beaches Drafting	15 September 2023
DA11	n/a	North East Elevation	Northern Beaches Drafting	15 September 2023
DA12	n/a	Section A-A	Northern Beaches Drafting	15 September 2023
DA13	n/a	Section B-B	Northern Beaches Drafting	15 September 2023
DA14	n/a	Section C-C, Section D-D	Northern Beaches Drafting	15 September 2023
DA15	n/a	Section E-E	Northern Beaches Drafting	15 September 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate	A500249	Bodill Ventures Pty Ltd	20 June 2023
Heritage Impact Statement	n/a	Biarchitects	19 July 2023

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

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

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

2. Compliance with Other Department, Authority or Service Requirements

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

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

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

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

3. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon

- plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- (i) showing the name, address and telephone number of the Principal Certifier for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.
- Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

4. **General Requirements**

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
- 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,
 - No work on Sundays and Public Holidays.
- Demolition and excavation works are restricted to:
- 8.00 am to 5.00 pm Monday to Friday only.
- (Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).
- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the 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 \$7,150.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$715,000.00.

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

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

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

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

6. **Security Bond**

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

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

7. No Clearing of Vegetation

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

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

Reason: To protect native vegetation.

8. Stormwater Disposal

The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's Water Management for Development Policy. Stormwater shall be conveyed from the site to the street. 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.

9. 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.

10. Roof form facing Stuart Street

The proposed gable roof form facing Stuart Street should be changed to a hip roof form as it is considered to respond better to the original house and its presentation to the streetscape.

Reason: To retain the existing streetscape presentation.

11. Compliance with Standards

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

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

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

12. Sydney Water "Tap In"

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

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

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

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

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

DURING BUILDING WORK

13. Protection of Existing Street Trees

a) 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.

b) 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.

14. Tree and Vegetation Protection

- a) Existing trees and vegetation shall be retained and protected, including:
 - i) all trees within the site,
 - ii) all trees and vegetation located on adjoining properties,
 - iii) all trees and vegetation within the road reserve.
- b) Tree protection shall be undertaken as follows:
 - i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with

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

The Principal Certifier must ensure that:

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

Reason: Tree and vegetation protection.

15. **Wildlife Protection**

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



Reason: To protect native wildlife.

16. **Protection of Habitat Features**

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

Reason: To protect wildlife habitat.

17. **Road Reserve**

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

Reason: Public safety.

18. **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.

19. **Property Boundary Levels**

The Applicant is to maintain the property boundary levels. No approval is granted for any change to existing property alignment levels to accommodate the development.

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

Reason: To maintain the existing profile of the nature strip/road reserve.

20. **Traffic Control During Road Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual (<http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf>) and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

21. **Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

22. **No Weeds Imported On To The Site**

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

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

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

23. **Stormwater 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.

In signing this report, I declare that I do not have a Conflict of Interest.

Signed

Rodney Piggott, Manager Development Assessments

The application is determined on //, under the delegated authority of:

Rodney Piggott, Manager Development Assessments

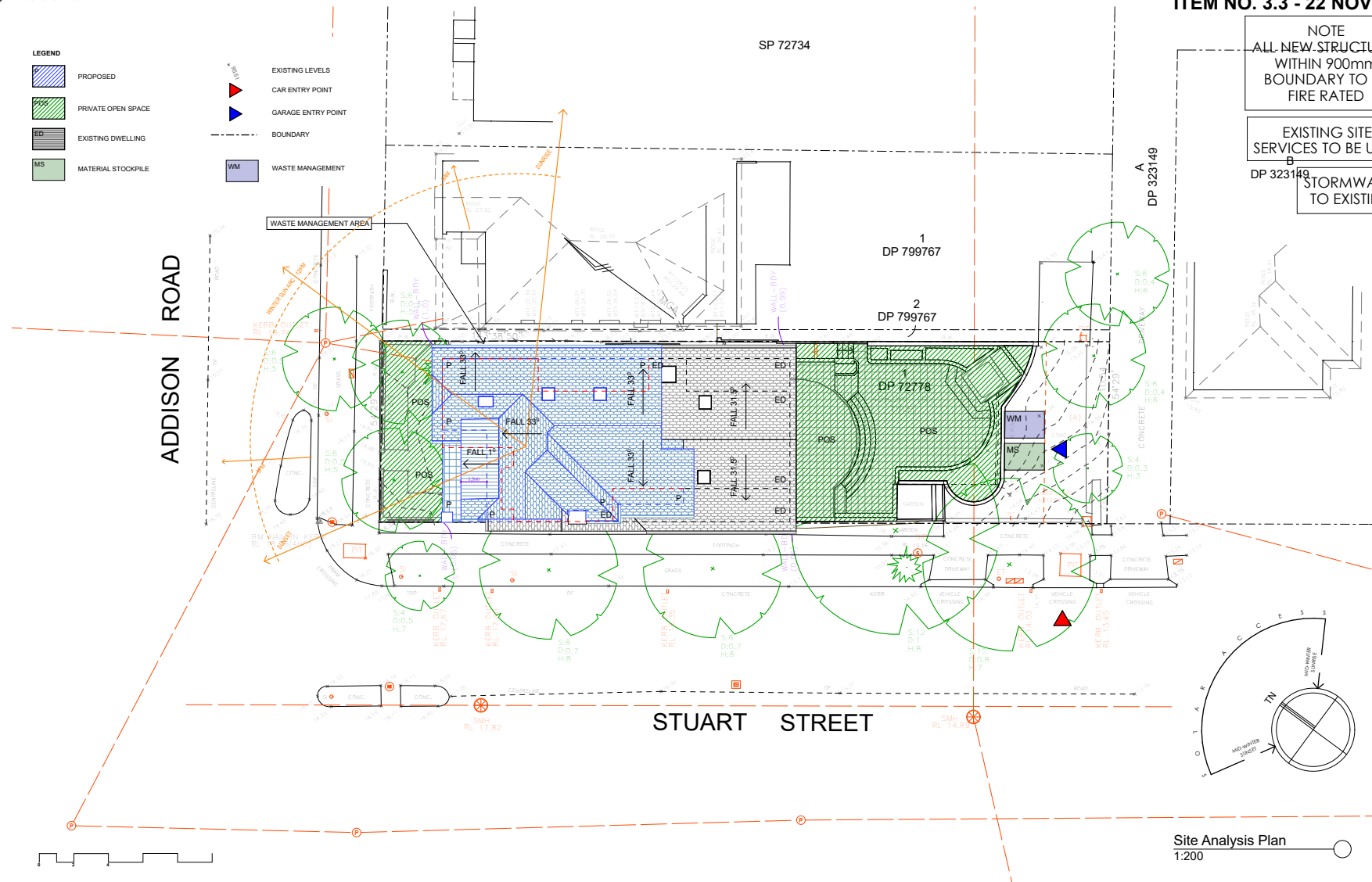
LEGEND

- PROPOSED
- PRIVATE OPEN SPACE
- EXISTING DWELLING
- MATERIAL STOCKPILE

EXISTING LEVELS
CAR ENTRY POINT
GARAGE ENTRY POINT
BOUNDARY
WASTE MANAGEMENT

NOTE
ALL NEW STRUCTURES
WITHIN 900mm
BOUNDARY TO BE
FIRE RATED

EXISTING SITE
SERVICES TO BE USED
STORMWATER
TO EXISTING



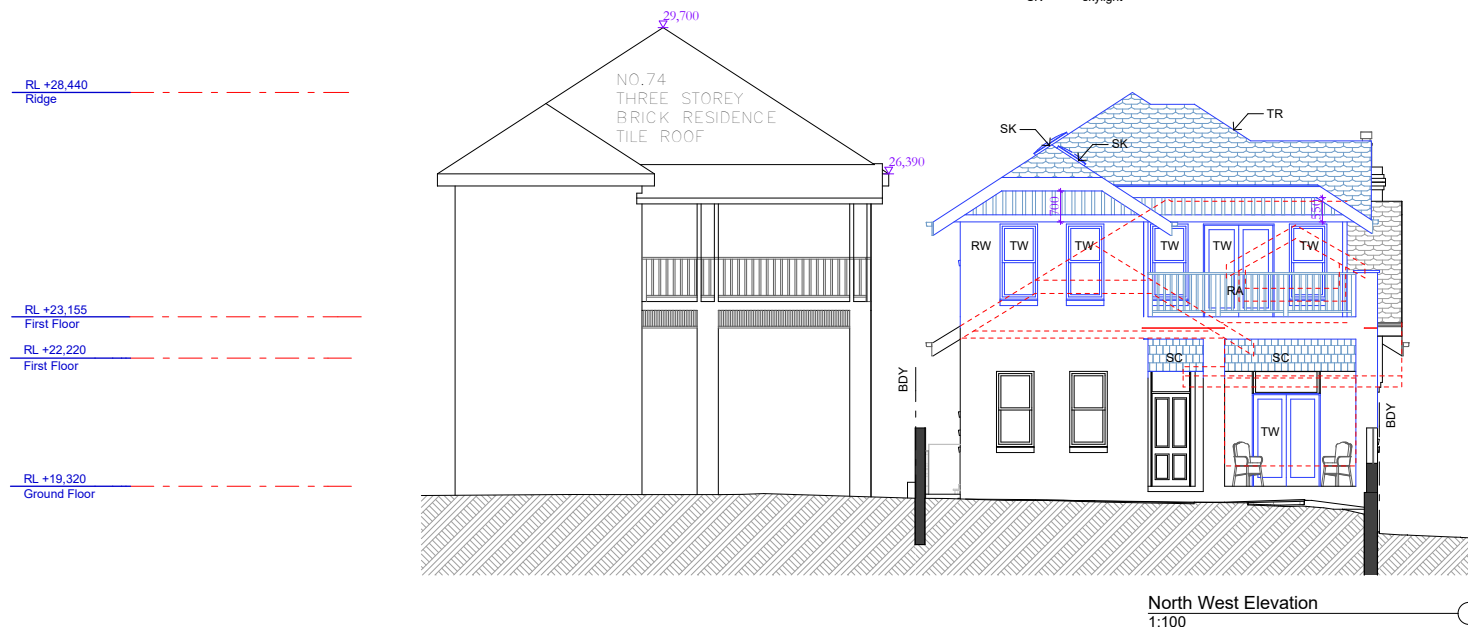
<p>Date : _____</p> <p>Issue : _____</p> <p>Description : _____</p>		<p>The builder shall check and verify all dimensions and verify all errors and omissions to the Designer. Do not scale the drawings. Drawings shall not be used for construction purposes until issued by the Designer for construction.</p>	<p>NORTHERN BEACHES DRAFTING</p> <p>0414 978 491 info@northernbeachesdrafting.com.au</p>	<p>Project : Additions & Alterations DA 72 Addison Rd, Manly Lot 1 in DP 72778 - 436.3m2</p> <p>Client : Private Residence</p> <p>Drawing : Site Analysis & Waste Management Plan</p>	<ul style="list-style-type: none"> Proposed Work Demolition Existing 	<p>Drawn/Designed : PB</p> <p>Project Number : 2304</p> <p>Drawing No. : DA3</p>	<p>Date : 15/09/23</p> <p>Scale : 1:200 @ A3</p> <p>Issue : _____</p>
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NOTE
ALL NEW STRUCTURES
WITHIN 900mm
BOUNDARY TO BE
FIRE RATED

EXISTING SITE
SERVICES TO BE USED

STORMWATER
TO EXISTING

TR timber framed roof with tile cladding
RW painted rendered wall
FW fire rated wall
TW timber window
RA rail to BCA
SK skylight



Date :	Issue :	Description :

The builder shall check and verify all dimensions and verify all errors and omissions to the Designer. Do not scale the drawings. Drawings shall not be used for construction purposes until issued by the Designer for construction.



Set 1 of 10
P
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@northernbeachesdrafting.com.au

Project : Additions & Alterations
DA
72 Addison Rd, Manly
Lot 1 in DP 72778 - 436.3m2
Client : Private Residence
Drawing : **Elevations, NW**

■ = Proposed Work
■ = Demolition
■ = Existing

Drawn/Designed : PB

Project Number : **2304**

Drawing No. : **DA8**

Date : 15/09/23

Scale : 1:100 @ A3

Issue :

NOTE
ALL NEW STRUCTURES
WITHIN 900mm
BOUNDARY TO BE
FIRE RATED

EXISTING SITE
SERVICES TO BE USED

STORMWATER
TO EXISTING

TR timber framed roof with tile cladding
RW painted rendered wall
FW fire rated wall
TW timber window
RA rail to BCA
SK skylight

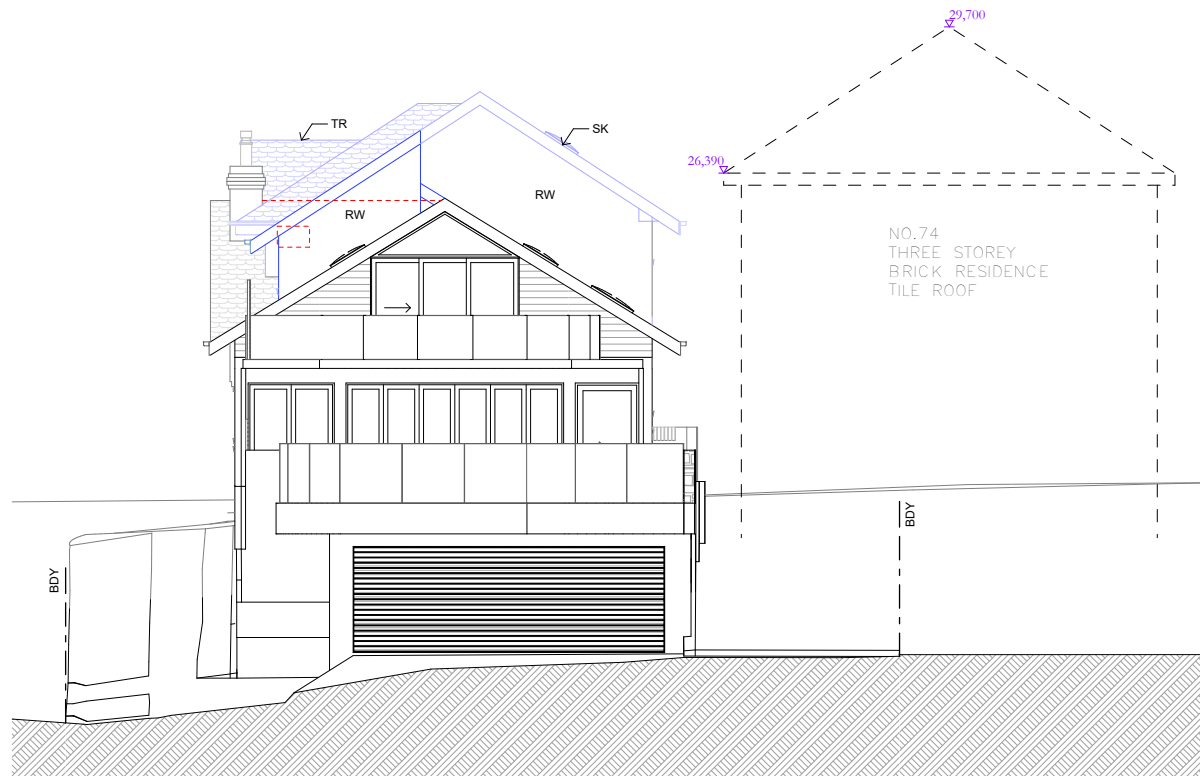
RL +28.440
Ridge

RL +23.155
First Floor

RL +22.220
First Floor

RL +19.320
Ground Floor

RL +15.540
Garage Floor



South East Elevation
1:100



Date :	Issue :	Description :

The builder shall check and verify all dimensions and verify all errors and omissions to the Designer. Do not scale the drawings. Drawings shall not be used for construction purposes until issued by the Designer for construction.



Setra 1018-400
P 0941 1018-400
E 0941 1018-400

Project : Additions & Alterations
DA
72 Addison Rd, Manly
Lot 1 in DP 72778 - 436.3m2
Client : Private Residence
Drawing : **Elevations, SE**

■ = Proposed Work
■ = Demolition
■ = Existing

Drawn/Designed : PB

Project Number : **2304**

Drawing No. : **DA9**

Date : 15/09/23

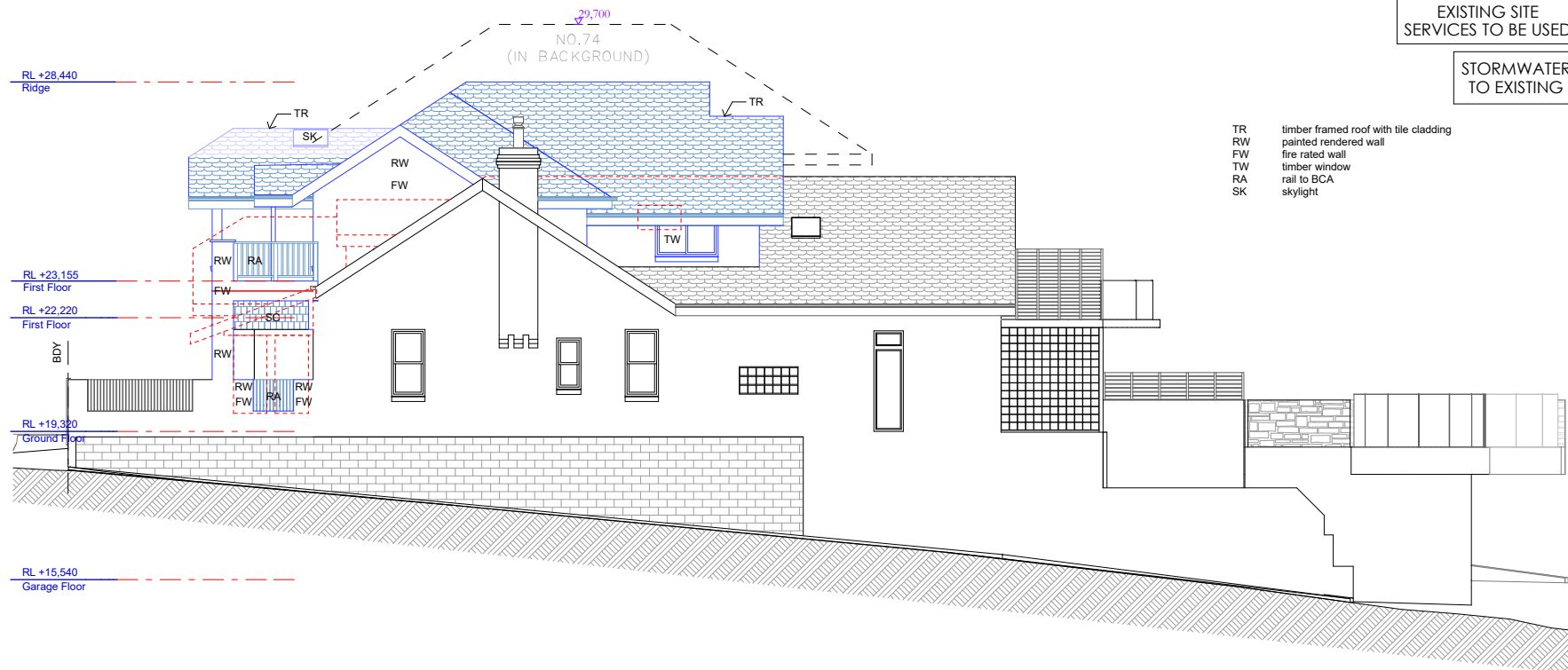
Scale : 1:100 @ A3

Issue :

NOTE
ALL NEW STRUCTURES
WITHIN 900mm
BOUNDARY TO BE
FIRE RATED

EXISTING SITE
SERVICES TO BE USED

STORMWATER
TO EXISTING



TR timber framed roof with tile cladding
RW painted rendered wall
FW fire rated wall
TW timber window
RA rail to BCA
SK skylight

South West Elevation
1:100

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NOTE
ALL NEW STRUCTURES
WITHIN 900mm
BOUNDARY TO BE
FIRE RATED

EXISTING SITE
SERVICES TO BE USED

STORMWATER
TO EXISTING

TR timber framed roof with tile cladding
RW painted rendered wall
FW fire rated wall
TW timber window
RA rail to BCA
SK skylight

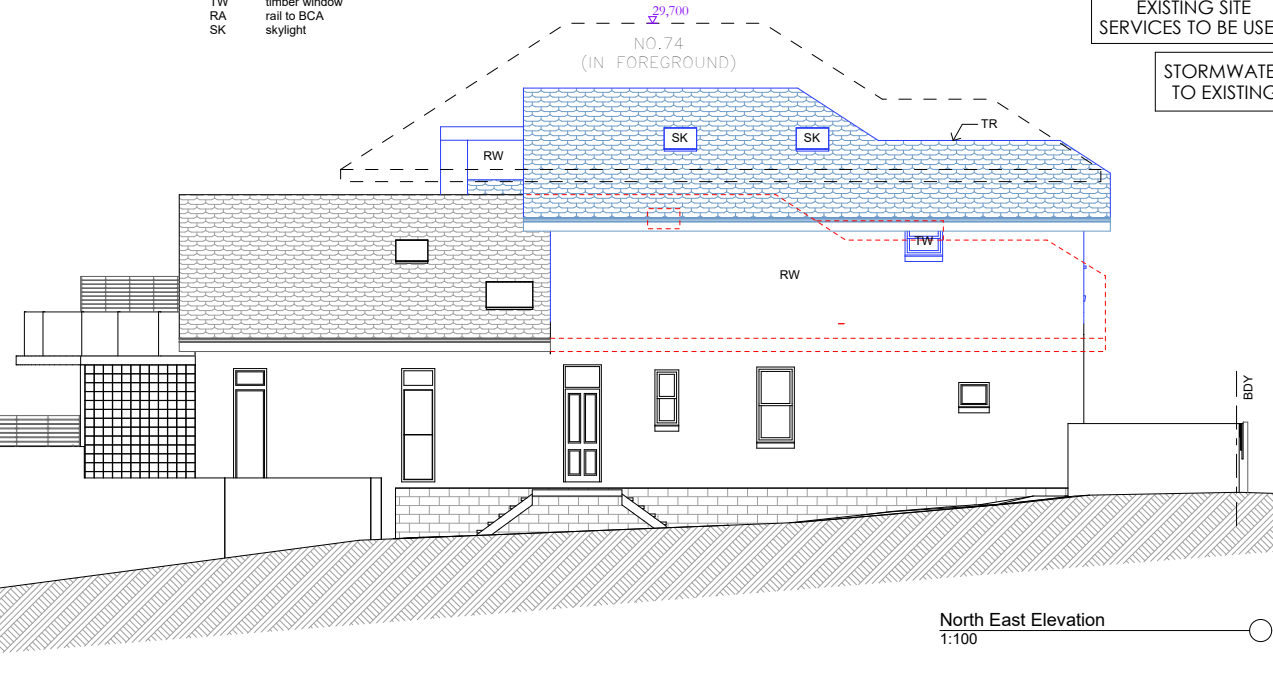
RL +28.440
Ridge

RL +23.155
First Floor

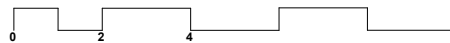
RL +22.220
First Floor

RL +19.320
Ground Floor

RL +15.540
Garage Floor



North East Elevation
1:100



Date :	Issue :	Description :	The builder shall check and verify all dimensions and verify all errors and omissions to the Designer. Do not scale the drawings. Drawings shall not be used for construction purposes until issued by the Designer for construction.	 NORTHERN BEACHES DRAFTING <small>Set 1 10/24/2023 P 01/24/2024 E 01/24/2024</small>	Project : Additions & Alterations DA 72 Addison Rd, Manly Lot 1 in DP 72778 - 436.3m2 Client : Private Residence Drawing : Elevations, NE	<div style="display: flex; flex-direction: column; align-items: center;"> <div style="display: flex; align-items: center; margin-bottom: 5px;"> <div style="width: 15px; height: 15px; background-color: blue; margin-right: 5px;"></div> = Proposed Work </div> <div style="display: flex; align-items: center; margin-bottom: 5px;"> <div style="width: 15px; height: 15px; background-color: red; margin-right: 5px;"></div> = Demolition </div> <div style="display: flex; align-items: center;"> <div style="width: 15px; height: 15px; background-color: black; margin-right: 5px;"></div> = Existing </div> </div>	Drawn/Designed : PB Project Number : 2304 Drawing No. : DA11	Date : 15/09/23 Scale : 1:100 @ A3 Issue :
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BLACKWATTLE PLANNING

CLAUSE 4.6 Request for
variation to
Manly LEP 2013
HEIGHT OF BUILDINGS

for alterations and additions to an
existing dwelling at

**72 Addison Road
MANLY**

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- 2.0 Manly Local Environmental Plan 2013
- 3.0 Variation to Clause 4.3 Height of buildings
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- Figure 4 Roof Plan

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1.0 Introduction

This Clause 4.6 Request for Variation to the Height of Buildings development standard under Manly Local Environmental Plan 2013 (MLEP 2013) is prepared by Blackwattle Planning on behalf of the land owners. The request is provided to support a Development Application for alterations and additions to an existing dwelling at 72 Addison Road Manly to be submitted to Northern Beaches Council.

The Development Application is for alterations and additions to the existing dwelling to provide a first floor addition accommodating a study, and an additional bedroom, ensuite and robe.

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 MLEP 2013 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 standards.

2.0 Manly LEP 2013

No. 72 Addison Road (the site) falls within the area to which MLEP 2013 applies. The site contains an existing dwelling and has an area of 436.3sqm. The land is situated on the south eastern side of Addison Road and falls from north west to south east over the length of the site. There is also considerable cross fall across the site to the north east.

Under **Clause 2.2** of MLEP 2013, the site is zoned R1 General Residential as shown in Figure 1 below. Dwelling houses are permitted with consent. The proposal for alterations and additions to a dwelling is permissible with consent in the R1 Zone.



Figure 1: The site outlined yellow indicating zone R1 General Residential, **Source:** NSW Planning Spatial Viewer

Clause 4.3 of MLEP 2013 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 yellow on map indicating Category I, 8.5m Height limit.
Source: NSW Planning Spatial Viewer

Clause 4.6 of MLEP 2013 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 building

This written request seeks a variation to Clause 4.3 Height of buildings development standard in MLEP 2013.

MLEP 2013 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 highest point of the proposed works is the ridge of the south east facing gable end at RL 28.44m AHD above the ground level immediately below. The ridge has a maximum height of 10.1m above ground level. The variation to the 8.5m Height of buildings development standard sought is 18%.

4.0 Clause 4.6 Exceptions to Development standard

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 MLEP 2013. 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 MLEP 2013 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 establish 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 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 prevailing height of buildings in the immediate locality is in excess of the height limits within both the LEP and DCP. Nonetheless, the proposed additions to 72 Addison Road are mostly compliant and exceed compliance to a large extent.

The exceedance of the height limit for a small portion of the roof allows the pitched roof form, which is characteristic of the immediate locality and consistent with the style of the original dwelling.

4.2.2

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

Comment: The proposed additions are well below the height of the neighbouring single dwelling as demonstrated in the below elevation, and of significantly lesser scale than the surrounding flat buildings.

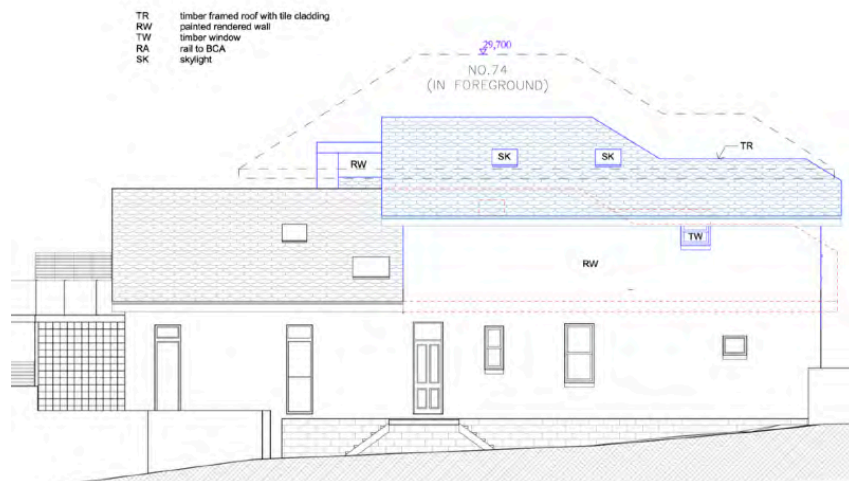


Figure 3: North east elevation showing the additional height of the adjoining dwelling No 74 Addison Road **Source:** Northern Beaches Drafting

Additionally, the scale of the ridge is minimised by its central location in the roof form and on the site generally. This maximises the distance from where the highest point is viewed from, lessening the perception of scale. Scale is also minimised in the design through the stepping of the roof form and floor plate of the upper level.

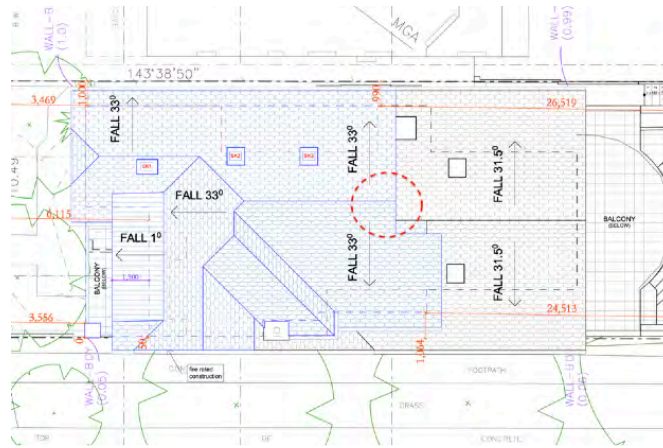


Figure 4: The central location of the breaching roof element (dashed red) lessens its impact as viewed from neighbouring and nearby dwellings, and from the public domain **Source:** Northern Beaches Drafting, annotated by Blackwattle Planning

4.2.3

- (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 site is located a significant distance from the Harbour and foreshore area and the new roof form will be unobtrusive in the visual catchment from the Harbour.

Views both to and from Addison Road to the harbour will have no adverse impact as a result of the proposal because the site is located well below most other buildings in the vicinity. The proposed additions will remain below the canopy of street trees on Addison Road and Stuart Street such that the additional roof for will not interrupt view lines.

4.2.4

- (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: Due to the north west - south east alignment of the site, and the location of the site on a corner, shadows arising from the roof will largely fall within the shadow footprint of the existing dwelling. Some minimal additional shadow will predominantly fall on the carriageway of Stuart Street. The neighbouring dwelling to the south east remains unaffected for the majority of the midwinter day and the road system provides additional spatial separation to other properties to the south west, ensuring they are not unreasonably affected by overshadowing despite the height breach.

4.2.5

(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 located within the R1 General Residential zone which is not an environmental protection zone and strictly this objective is not relevant. Notwithstanding, the height of the structures proposed are a result of the fall in the land together with the retention of the existing ground and first floor levels. No site disturbance is proposed, and no conflict arises with vegetation, topography or the surrounding land uses.

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

Comment: The site does not fall within a heritage conservation area. Vegetation will continue to be a dominant visual characteristic of the locality as viewed from the surrounding locality. Despite the non-compliance, there will be no adverse visual impact on any heritage values as a result of the proposal.

4.2.7 Conclusion under Clause 4.6 (3)(a)

We conclude that as the proposed development meets the objectives of the Height of buildings development standard as outlined above, 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 proposed works which exceeds the development standard is a portion of the centrally located roof ridge, which breaches the limit as the land falls

away to the north east underneath the dwelling. The environmental planning grounds that justify the exceedance of the development standard are as follows:

Fall of the land

- The nature of the topography at 72 Addison Road is a primary reason the proposed new roof breaches the height limit. The fall from north west to south east along the site, together with ground level changes across the site under the building results in a complying roof form at the north eastern end of the dwelling, but becoming noncompliant as the land falls away towards the south east.

Retention of existing structure

- The existing floor levels at the ground and upper level are to be retained, and the floor to ceiling space in the new master bedroom, bathroom and robe has been kept to the minimum required 2.4m
- The height of the roof form is a function of utilising the existing floor levels and the width of existing structure, together with achieving a consistency of roof form with the era of the original dwelling, and those of nearby dwellings.

Overall lesser height in the locality

Aside from the single storey dwelling at 10 Stuart Street, the dwelling as proposed will remain the lowest building form within the streetscape of the Addison Road/Stuart Street intersection. Importantly, dwellings and attached dwellings to the north east in Addison Road will remain of a significantly greater scale and the proposed additions will remain subservient to these building forms and the many RFB's that otherwise surround it.

Absence of impact

The non-compliance roof form has been minimised in its perceived impact through its centralised location, and does not result in privacy issues or unreasonable overshadowing. The first floor addition will remain within a context of landscaping and canopy and no view loss is anticipated as a result of this and its spatial separation from surrounding elevated dwellings.

4.3.1 Objects of the Environmental Planning and Assessment Act

In demonstrating sufficient environmental planning grounds, it is noted that the contravention of the maximum height standard in this case fulfils the following objects of the Environmental Planning and Assessment Act 1979:

(g) to promote good design and amenity of the built environment,

Permitting the height variation will facilitate the pitched roof form which makes a positive contribution to the character of the immediate locality. As the pitch of the roof results in no adverse amenity impacts, the favourable character outcomes that arise with its inclusion demonstrate that this object of the Act is achieved.

(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,

The additional floor space achieved by the addition will extend the economic life of the existing structure and maximise the efficiencies gained through retention of structure rather than demolition. The ability to provide the additional floor space without any site disturbance is a worthy aspiration and one which reinforces environmental considerations of Council's policy.

4.3.2 Conclusion under Clause 4.6(3)(b)

In our opinion the above environmental planning grounds are sufficient to justify the exceedance of the height of buildings development standard.

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 Consistent with objectives of development standard

As outlined in paragraphs 4.2 of this document, the proposed development exceeding the height limit is found to be consistent with the objectives of the Height of buildings development standard.

4.5.2 Consistent with objectives of the R1 General Residential Zone

The objectives of this zone and the manner in which the objectives are achieved by the proposed development are as follows:

To provide for the housing needs of the community.

The proposed development does not increase the density of the site beyond a single dwelling and provides much needed additional floor space for the current and future occupants.

To provide for a variety of housing types and densities

The site will continue to provide a single dwelling. The additional height will permit its ongoing economic life at a lower density within a neighbourhood of much higher densities and scale, providing variety in housing types and densities as anticipated.

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

The proposed use is a permissible use in the zone and the continued use of the site for a dwelling does not conflict with other permitted or approved uses.

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 of the R1 General Residential zone.

Following this, the consent authority can be satisfied that it is appropriate to apply the flexibility permitted under Clause 4.6 of MLEP 2013 to vary the Height of Buildings development standard of MLEP 2013 to the extent proposed.

Anna Williams
BTP (Hons) UNSW
B Ec (Soc Sc) USYD

Director
Blackwattle Planning

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ITEM 3.4	DA2023/0869 - 3 LAWSON PLACE MANLY - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Adam Richardson
TRIM FILE REF	2023/749888
ATTACHMENTS	<ol style="list-style-type: none">1 Assessment Report2 Site Plan and Elevations3 Clause 4.6 - Floor Space Ratio4 Clause 4.6 - Height of Building

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 & floor space ratio.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 & Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2023/0869 for alterations and additions to a dwelling house on land at Lot B DP 345901, 3 Lawson Place MANLY, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0869
Responsible Officer:	Brittany Harrison
Land to be developed (Address):	Lot B DP 345901, 3 Lawson Place MANLY NSW 2095
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Graeme Paul Blockley Julie Gay Blockley
Applicant:	Breakspear Architects Pty Ltd
Application Lodged:	19/07/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	25/07/2023 to 08/08/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 12.7% 4.4 Floor space ratio: 23.5%
Recommendation:	Approval
Estimated Cost of Works:	\$ 198,000.00

EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) due to proposal contravening both Clause 4.3 Height of buildings and Clause 4.4 Floor Space Ratio (FSR) of the Manly Local Environmental Plan 2013 (MLEP 2013) by more than 10.0%. The non-compliances to both development standards are supported by a written Clause 4.6 request.

The maximum building height for the site is 8.5 metres. The proposal results in a maximum building height of 9.58 metres, with a variation of 12.7%. Despite the building height non-compliance, the

proposed works will be located below the existing RL of the dwelling (RL 56.11), as the additions are contained within the roof space. Therefore, the overall existing building height of the dwelling will not be altered but rather result in an extension of height breach over the 8.5 metre development standard, due to a modified roof profile.

The maximum permitted FSR for the site is 0.6:1 (144.18m²). The proposal results in an FSR of 0.74:1 (178.0m²), resulting in a variation of 23.5% (33.82m²). The written Clause 4.6 request for the non-compliance with the FSR standard arises from an additional 24.0m² increase in floorspace. The existing building exhibits a non-compliant floorspace, based on historical approvals. The proposed works under this application will increase the FSR from 0.67:1 to 0.74:1. The additional 24.0m² floorspace will be located wholly within the new habitable attic space, and will not unacceptably increase the bulk and scale of the building, or determinately impact the streetscape character, for the reasons discussed in this report. It is noted that surrounding the subject site are a number of dwellings which significantly exceed the maximum FSR.

The proposed development was notified in accordance with Northern Beaches Community Participation Plan (CPP) for fourteen (14) days, with no submissions received. A set of amended were received during the assessment process to address concerns (as discussed within 'Site History') elsewhere in this report. The amended plans will form the basis of this assessment.

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

PROPOSED DEVELOPMENT IN DETAIL

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

Specifically, the works comprise of the following:

- Partial demolition of the existing roof form to accommodate the proposed habitable space (bedroom and ensuite);
- Adjustment of roof pitch to allow for extension and the addition of two (2) dormers;
- Internal adjustments to allow for internal staircase and skylight addition.

ASSESSMENT INTRODUCTION

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

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)
 Manly Development Control Plan - 3.2 Heritage Considerations
 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 - 4.1.7 First Floor and Roof Additions

SITE DESCRIPTION

Property Description:	Lot B DP 345901 , 3 Lawson Place MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the western side of Lawson Place.</p> <p>The subject site is legally identified as Lot B in Deposited Plan 345901, No. 3 Lawson Place, Manly.</p> <p>The site is irregular in shape with a street frontage of 11.505 metres and a surveyed area of 240.3m².</p> <p>The site is located within the R1 General Residential zone under the provisions of the Manly Local Environmental Plan 2013 and accommodates a dwelling house.</p> <p>The site topography is relatively flat and consists of a lawn area to the front and rear with garden beds.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by dwelling houses, dual occupancies and residential flat buildings. The subject site is within the vicinity of two (2) heritage items, these being the 'All Stone Kerbs' and houses along Quinton Road and Augusta Road.</p>

Map:



SITE HISTORY

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

10.2016.71.1

Development Application for the partial demolition of the existing front fence, construction of a single hard stand car parking space and driveway.
Determined on 26 April 2016.

DA2022/1529

Development Application for the alterations and additions to a dwelling house.
Withdrawn on 20 December 2022.

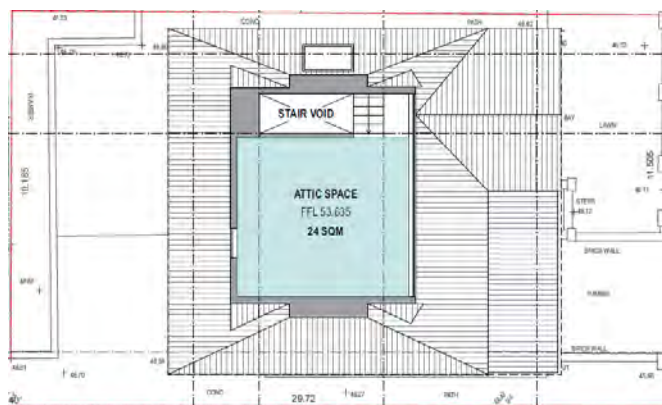
Reasons for Withdrawal

- Extent of variation to Clause 4.3 Building Height and Clause 4.4 Floor Space of the MLEP 2013;
- Heritage Advisor concerns relating to proposed roof form and resultant impact to the significance of the existing heritage context.

A meeting was held with the applicant to discuss the concerns and potential amendments that could be made to provide a more skillful design. A draft plan was reviewed before lodgement of the second development application. The amendments made included the reduction in floor space area, simplified internal stair, configuration and an improvement in responding to the existing roof and surrounding heritage items. The figures below show the difference in design.



(Figure 1 and 2: Proposed Plans - DA2022/1529 - Withdrawn).





(Figure 3 and 4: draft conceptual plans submitted by the applicant dated 15 March 2023).

History of Current Application

The development application was notified for a period of fourteen (14) days, as stated within Council's Community Participation Plan (CPP), with no submissions received.

Council advised the applicant of the issues revealed during the assessment process on 13 October 2023, which included the following:

- **Clause 4.4 Floor Space Ratio (MLEP 2013):** The initial proposed works provided an additional area of approximately 27.3m², resulting in an FSR of 0.75:1 (181.30m²), with a variation of 25.7%. The initial FSR proposed exceeded the previous FSR proposed under DA2022/1529 (which was withdrawn) and the draft plan that was sent to Council for review dated 15 March 2023, with an entirely different internal stair layout.
- **Clause 4.1.4.2 Side setbacks and secondary street frontages (MDCP 2013):** The draft plan that was reviewed before lodgement had a side setback of approximately 3.0m to the south and 2.2m to the north. The initial proposal included a setback of 0.9m to the north and 1.8m to the south and has added additional windows.
- **Council's Heritage Officer** has reviewed the proposal and has also identified issues with the current design, particularly in relation to the modified roof form.

It was requested that the proposal be amended to align with a design similar to that of the draft plan (dated 15 March 2023) which was reviewed before the lodgement of this development application.

Architectural plans and accompanied documents were amended to align with the draft plan (dated 15 March 2023), these amended plans were received on 24 October 2023. The amendments resulted in a

reduction of environmental impact, and therefore, is not required to be re-notified as per Council's CPP.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Mainly Development Control Plan 2013 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a recommended condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to floor space ratio, height of buildings, side setbacks and matters relating to Heritage.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a recommended condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a recommended</p>

Section 4.15 Matters for Consideration	Comments
	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 Manly Development Control Plan 2013 section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 25/07/2023 to 08/08/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	<i>Supported, subject to conditions.</i>
	<p>The proposal has been referred to Heritage as the subject site is within the vicinity of two heritage items:</p> <p>Item I215 - Group of Houses - 1–23, 25 and 27 Quinton Road and 1–7 Augusta Road</p> <p>Item I2 - All stone kerbs - Manly municipal area</p>
	Details of heritage items affected
	<p>Item I215 - Group of Houses</p> <p><u>Statement of significance</u></p> <p>The group of houses at 1-23, 25 and 27 Quinton Road are a remarkably intact example of early Twentieth Century development, typical of the Manly area at that time. The street presents a cohesive representation of the changes occurring to the Manly community in the early 1900s, with regard to population increase and changes to typical dwelling types. The group's associations with various local identities over time further solidify this historical significance to Manly. The street's picturesque location and high architectural quality contribute to the group's aesthetic significance, as do the extant details such as fences, rooflines, materials, landscaping and setbacks.</p> <p><u>Physical description</u></p> <p>The group of houses on lower Quinton Road and 1, 3, 5 and 7 Augusta Road is a substantially intact example of villa residences, as well as post World War 1 residential flat buildings, typical of early Twentieth Century development in the Manly district. The architectural style exhibited is predominantly Federation, including both Queen Anne and Arts and Crafts style elements, reflecting the first period of development in the street. Features include asymmetrical designs, face brickwork, use of ornamental timberwork on verandah and "flying" gables, tall chimneys with terracotta pots, the use of slate or Marseille terracotta tile roofing, bay windows and wall hung shingles.</p> <p>Some of the buildings at the southern end of the street illustrate the later Interwar phase of development, with the residential flat buildings presenting more austere, Art Deco type of design details, such as darker brick, vertical detailing and symmetrical design. Due to the topography of the street, the houses on the western side of the road exhibit some interesting features, such as the substantial sandstone retaining walls, as well as symmetrical access stairways and picket fences at numbers 15-17, 19-21 and 23-25. It is noted that number 20a, whilst being a recent addition to</p>

Internal Referral Body	Comments																					
	<p>the street, is a good example of infill development and does not detract from the significance of the street.</p> <p>Numbers 1, 3, 5 and 7 Augusta Road are quite separate from the lower Quinton Road part of the group. They are oriented north-south, fronting Augusta Road, and present a style and character typical of the time they were constructed. Number 5 has been substantially modified in recent years, and any heritage significance associated with the building has been greatly compromised. Essentially, the streetscape remains little changed, with original setbacks, rooflines, architectural detailing and landscaping aspects such as fences still intact.</p> <p>Item I2 - All stone kerbs</p> <p><u>Statement of significance</u> Stone kerbs are heritage listed.</p> <p><u>Physical description</u> Sandstone kerbing to streets relating to paving and kerbing of streets in the nineteenth century. Mostly located within Manly Village area and adjacent lower slopes of Eastern Hill and Fairlight.</p> <table><tr><th colspan="3">Other relevant heritage listings</th></tr><tr><td>SEPP (Biodiversity and Conservation) 2021</td><td>No</td><td></td></tr><tr><td>Australian Heritage Register</td><td>No</td><td></td></tr><tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr><tr><td>National Trust of Aust (NSW) Register</td><td>No</td><td></td></tr><tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr><tr><td>Other</td><td>No</td><td></td></tr></table> <p>Consideration of Application</p> <p>The proposal seeks consent for alterations and additions to the existing dwelling, including an attic floor addition. The existing building is not a listed heritage item, but it dates back to the early 1900s and it is within close proximity to a heritage item listed as a group of houses. Although, it has been modified, the existing building has retained its original character, including the original built form, bulk and scale and some external features.</p> <p>It is noted that a development application with a similar proposal was withdrawn in September 2022 and Heritage had required the proposed roof to respond the existing roof form and any additions</p>	Other relevant heritage listings			SEPP (Biodiversity and Conservation) 2021	No		Australian Heritage Register	No		NSW State Heritage Register	No		National Trust of Aust (NSW) Register	No		RAIA Register of 20th Century Buildings of Significance	No		Other	No	
Other relevant heritage listings																						
SEPP (Biodiversity and Conservation) 2021	No																					
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National Trust of Aust (NSW) Register	No																					
RAIA Register of 20th Century Buildings of Significance	No																					
Other	No																					

Internal Referral Body	Comments
	<p>to the roof to remain below the existing ridge line. The current proposal is for a larger extension which modifies the existing roof; by changing the existing pitch to the north and south roof planes and projecting large dormers to the east and west facing roof planes. The result is considered to be unsympathetic to the character of the existing building and the surrounding buildings.</p> <p>The proposal should respond the controls of Manly DCP 2013 - 3.2 Heritage Considerations and 4.1.7.2 Habitable Rooms in the Roof Structure: <i>"Habitable rooms will be permitted in a roof structure subject to compliance with all other controls in this plan and the LEP including height and FSR in the LEP. However alterations and additions to a building which existed prior to 2007 may involve habitable rooms within an existing roof structure that is above the maximum wall and roof height; (see paragraph 4.1.2 of this plan) subject to the rooms not detracting from the character or integrity of the roof structure and not adversely impacting on the amenity of adjacent and nearby properties and the streetscape."</i></p> <p>The proposed roof form is considered to detract from the integrity of the existing roof form and impacting the heritage buildings across the road and the other surrounding buildings. The existing roof pitch should be retained and the dormers should be smaller in size that is compatible with the heritage environment.</p> <p>Revised comments - 13 November 2023</p> <p>The applicant provided amended drawings with some improvements, including a slightly reduced roof pitch. It is considered that there is still room to further reduce the roof pitch, which is required to minimise the visual impact upon the integrity and character of the existing building and the significance of the heritage items across the road. The proposed retention of the front and rear roof planes, including the front gable is supported, however, the roof pitch to the north and south roof planes is required to be further reduced to become maximum 46 degrees, in order to reduce the impact of the proposed works to the acceptable levels from a heritage perspective.</p> <p>Therefore, no objections are raised on heritage grounds, subject to one condition.</p> <p><u>Consider against the provisions of CL5.10 of Manly LEP 2013.</u> Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No</p>

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A469713_04 dated 19 October 2023).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	8.5m	9.58m	12.7% (1.08m)	No (Refer to Clause 4.6)
Floor Space Ratio (FSR)	FSR: 0.6:1 (144.18m ²)	FSR: 0.74:1 (178.0m ²)	23.5% (33.82m ²)	No (Refer to Clause 4.6)

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

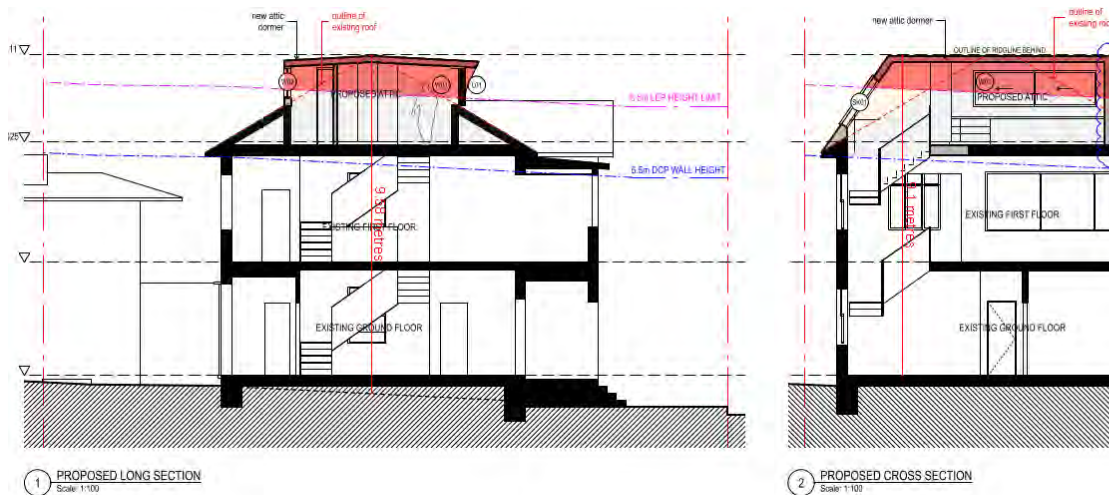
Detailed Assessment

4.6 Exceptions to development standards

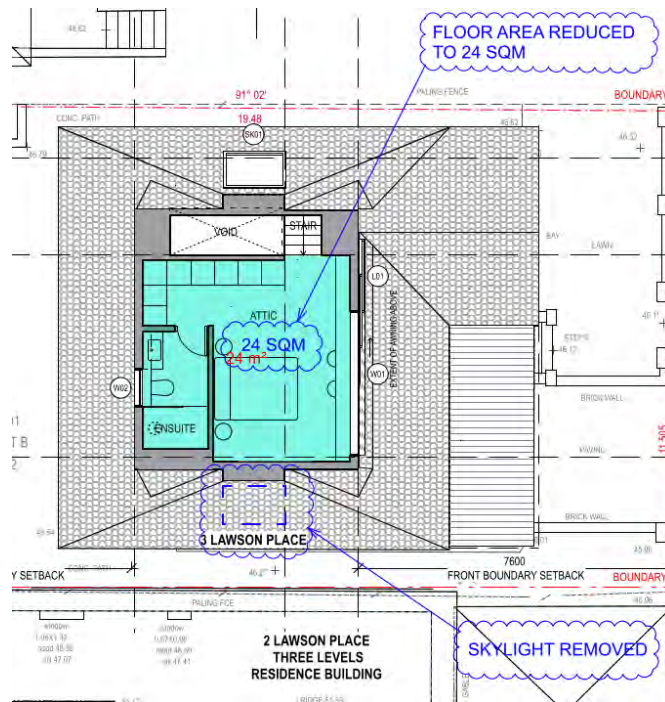
Description of Non-Compliance

Development standard	Height of buildings and Floor space ratio (FSR)
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Requirement	Height: 8.5m FSR: 0.6:1 (144.18m ²)
Proposed	Height: 9.58m FSR: 0.74:1 (178.0m ²)
Percentage variation to requirement	Height: 12.7% FSR: 23.5%



(Figure 5 and 6: Building height encroachment shown in red shading. Existing roof structure shown in red dash line).



(Figure 7: Additional floorspace shown in blue above - 24.0m²).

Assessment of request to vary a development standard

The following assessment of the variation to Clause 4.3 – Height of Buildings and Clause 4.4 - Floor space ratio development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

Clause 4.6 Exceptions to development standards

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

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

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

Comment

Clause 4.3 – Height of Buildings and Clause 4.4 - Floor space ratio development standard is not expressly excluded from the operation of this clause.

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

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

(4) Development consent must not be granted for development that contravenes a development standard unless:
(a) the consent authority is satisfied that:
(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
(b) the concurrence of the Secretary has been obtained.

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

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

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

Comment

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

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standards 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:

Height of Buildings

- *The existing dwelling breaches building height and the proposed roof alterations will not increase the absolute height of the dwelling (i.e. the works occur below the existing ridge RL). Under the heading "exceptions to height" at Part 4.1.2 of MDCP, it states that where an existing building exceeds the height of building standard, any alterations and/or additions to the building must not increase the overall height of the building. This control infers that the policy position of the consent authority is to allow for tolerance where an existing building breaches height and works do not increase overall height. This variation "condition" applies in this case.*
- *The eastern face of the proposed dormer is ~4m from the eastern-most edge of the roof form. Consequently, the altered roof form will not be discernible from Lawson Place at the property frontage. The image at Figure 3 demonstrates that the existing roof form is entirely concealed when viewed from street level. Similarly, we anticipate that the altered roof form will have limited visibility as one moves along Lawson Place from the south owing to local terrain (the southern section of Lawson Place being downslope of the site). - Refer to Image 1.*
- *The immediate context is characterised by a broad variety of housing typologies ranging from detached dwellings to residential flat buildings. Building scale is equally varied. Detached dwellings have a single to two storey scale, several nearby brick "walk-ups" comprise two to three storeys, and scattered late century flat buildings consist of several storeys or more. The image at Figure 4 shows the subject dwelling (roof visible) in the middle ground and nearby multi-storey residential flat buildings in the near background...a minor height breach is unlikely to have any consequence in terms of streetscape character where the locality consists of such a diverse and irregular pattern of development involving numerous buildings projecting above the 8.5m height plane. - Refer to Image 2.*
- *The height non-compliant element of the building does not have an adverse impact on neighbour amenity...The development, despite height breach, will have no adverse view impact...privacy will be preserved notwithstanding height breach...shadow will largely fall over roof surfaces and will have no impact on the ground level private open space area or living room windows.*

Floor Space Ratio

- *The proposed GFA is relatively modest (24sqm) and will be concealed within the envelope of the altered roof form. The proposed roof alterations will not present as an additional storey. The altered roof and dormer-style projections will not contribute in any significant way to perceived building volume.*
- *The eastern face of proposed dormer projection is ~4m from the eastern-most edge of the roof form. Consequently, the altered roof form will not be discernible from Lawson Place at the property frontage. - Refer to Image 1.*
- *The immediate context is characterised by a broad variety of housing typologies ranging from detached dwellings to residential flat buildings. Building density and volume is equally varied...buildings evident in the street block all exhibit a volume far greater than the 0.6:1 encouraged by the development standard. the additional roof volume proposed is unlikely to have any consequence in terms of streetscape character where the locality consists of such a diverse and irregular pattern of development involving numerous buildings with substantially greater volume compared to the proposed development. - Refer to Image 2.*
- *The FSR non-compliant element of the building does not have an adverse impact on neighbour amenity. - Same as the reasons noted under height of buildings.*



(Image 1: Extracted from the applicant's submitted Clause 4.6 - Building Height - View from Lawson Place).



(Image 2: Extracted from the applicant's submitted Clause 4.6 - Building Height - View from Lawson Place with surrounding context).

The sufficient environmental planning grounds that are advanced by the applicant are generally agreed with, and will be further assessed in detail against the relevant objectives below.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying 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 and Floor Space Ratio development standard and the objectives of the R1 General Residential zone. An assessment against these objectives is provided below.

Objectives of development standard - Height of Buildings

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

2013 are:

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

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

Comment

Despite the building height non-compliance, the proposed works will be located below the existing RL of the dwelling (RL 56.11). Therefore, the overall maximum building height of the dwelling will not be altered but rather result in an extension of height breach over the 8.5 metre development standard. The areas of encroachment include the partial modified roof structure and the new dormers, to allow for the habitable attic space. The building height within the immediate vicinity is considered to be diverse (including buildings over 8.5 metres in height) as is the building typology within the surrounding area. The spatial proportions of surrounding development are not uniformed but rather exhibit a range of heights, setbacks and landscaping elements.

The proposal will not impact the existing setbacks or the wall height of the dwelling house, with all works contained within the roof form. It is noted that the wall heights of the building exhibit an existing non-compliance. The roof forms within the area consist of different styles such as flat roofing, pitched roofing and skilion roofing, some including terraces and/or dormer windows. The dormer windows allow for space within existing roof spaces, and are a consistent characteristic within the Manly local area. The proposal will incorporate two dormers within the roof structure. The height of the roof has been measured at 2.5m, which is compliant with the requirements under MDCP 2013, despite the non-compliant change in roof pitch. Council's Heritage Advisor has recommended the pitch be lowered to 46 degrees to lessen any visual impact.

The change to the roof pitch on the northern and southern elevations with the addition of the dormers will provide a clear distinction between the existing features of the house and what is new, whilst still incorporating existing elements such the existing roof tile and colours.

It is considered that due to the irregularity of the streetscape, the proposed works will not result in a significant change to the existing character but rather add to the diverse nature of the lane way. The heritage items to the east will not be impacted as their heritage value would predominantly be appreciated from Quinton Road or Augusta Road, rather than the narrow one way lane, that is Lawson Place. The narrowness and topography of the street will aid in limited visibility of the roof structure when viewed from the public domain.

b) to control the bulk and scale of buildings,

Comment

The attic space contributing to the proposed height is entirely located within the roof structure, and is not considered to be defined as a third storey under the MLEP 2013. The dormer windows will add to the articulation of the altered roof form, aiding in the mitigation of any perceivable bulk and scale. Given the medium density of the area and the size and scale of many surrounding buildings, it is not considered that the roof alteration, subject to recommended conditions will contribute to excessive bulk that would visually impact the area in an adverse manner

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 not considered to contribute to unacceptable view loss from the public domain or adjoining dwellings.

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

Comment

The proposal was accompanied by solar access diagrams, which demonstrate minor changes, overall the solar access will remain generally the same as existing.

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

Comment

The subject site is located within the R1 General Residential zone, not a recreational or environmental zone, Therefore, this outcome does not apply.

Objectives of development standard -Floor Space Ratio

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 streetscape of Lawson Place is diverse in nature, consisting of various built form, height and landscape features, as noted above. The surrounding building typology consist of dwelling houses, residential flat buildings and dual occupancies, several being of great scale and density. It is considered that due to the irregularity of the streetscape, the proposed works will not result in a significant change to the existing character but rather add to the diverse nature of the lane way.

- 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 although exhibits non-compliance to the FSR requirement, will not result in such a scale that will obscure any surrounding landscape or townscape features. The works are not considered to result in any unacceptable view loss or amenity impacts. The external walls, setbacks and landscaping will remain the same, with the additional floor space to be located entirely within the roof structure. As noted previously, the attic space although habitable is not defined as a third storey under the MLEP 2013. As the additional floor space is located within

the roof, and will not be easily viewed from the public domain (in exception of various points across Lawson Place), the provided floor area for a small dwelling atop an undersized allotment is considered to be acceptable, in this particular instance.

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

Comment

As mentioned above, altered roof structure with the additional dormers will provide a clear distinction between the existing features of the dwelling and what is new, whilst still incorporating existing elements such the existing roof tile and colour of the dwelling house.

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

Comment

The proposed works are located within the existing footprint of the dwelling, which will not facilitate the need to disrupt the natural environment. The proposal is not considered to result in adverse environmental impacts on the use or enjoyment of adjoining land, including the public domain.

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

Comment

This clause is not relevant to the proposal. The proposal is for residential use and will therefore not impact on any business development or zones.

Zone Objectives

The underlying objectives of the R1 General Residential zone are:

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

Comment

The proposal includes an additional room within the roof form of the dwelling on an undersized allotment. The proposal will provide for increased amenity for the residents and future occupants, meeting the needs of an expanding community.

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

Comment

The proposal will maintain a residential dwelling use within an area of mixed typologies and variation in density (dwelling houses, dual occupancies and residential flat buildings).

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

Comment

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

Conclusion

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

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, 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 and Floor space ratio Development Standard associated with a single dwelling house (Class 1 building).

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 240.3m²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	South: 6.8m (based on gradient 1:20)	7.1m (Existing)	-	No (As Existing)
	North: 6.7m (based on gradient 1:30)	6.8m (Existing)	-	No (As Existing)
4.1.2.2 Number of Storeys	2 storeys	2 storeys (plus attic space)	-	Yes
4.1.2.3 Roof Height	Height: 2.5m	2.5m	-	Yes
	Pitch: maximum 35 degrees	55 degrees	20 degrees	No
4.1.4.1 Street Front Setbacks	Prevailing building line / 6.0m	Proposed Works: 7.6m, consistent with prevailing setback	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	South: 2.3m (based on wall height) North: 2.2m (based on wall height)	South: 2.6m - 2.9m North: 2.1m - 2.4m	- 4.6%	Yes No
	Windows: 3.0m	2.1m (Skylight)	30.0%	No
4.1.4.4 Rear Setbacks	8.0m	6.5m	18.7%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
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
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

Clause 3.1.1.3 Roofs and Dormer Windows requires the following:

- a) Roof forms should complement, but not necessarily replicate the predominant form in the locality and in particular those of adjacent buildings.*
- b) Roofs should be designed to avoid or minimise view loss and reflectivity.*
- c) Dormer windows and windows in the roof must be designed and placed to compliment the roof structure and reflect the character of the building. In particular, such windows are not permitted on the street frontage of the building where there is no precedent in the streetscape, especially on adjoining dwellings.*

Comment

A site visit indicated that the roof forms within Lawson Place consist of pitched roofs, skillion and flat roofs including several properties with dormer style window to the front façade or roof terraces, in which is a diverse streetscape with varying built forms and scales of development. The proposal consists of a roof design that incorporates a roof pitch similar to adjoining properties when viewed from

the side elevations, however, also includes a dormer to the front and rear elevation to allow for windows to the attic space. The roof style will not detract from the varied character of the existing streetscape. Given the narrow nature of the lane way, the dormer windows will not be so easily viewed when standing on the street. The proposal is not considered to contribute to unacceptable view loss. Council's Heritage Advisor supports the proposal subject to a recommended condition to reduce the roof pitch to the north and south roof planes from 55 degrees to 46 degrees, to further limit any impacts to surrounding heritage items and to better relate to the existing roof form.

3.2 Heritage Considerations

As the subject site is located within close proximity to heritage items, the proposal is to be assessed against the requirements of Clause 3.2.1.1 Development in the vicinity of heritage items, or conservation area.

Proposed development in the vicinity of a heritage item or conservation area must ensure that:

- i) it does not detract or significantly alter the heritage significance of any heritage items, conservation area or place;*
- ii) the heritage values or character of the locality are retained or enhanced; and*
- iii) any contemporary response may not necessarily seek to replicate heritage details or character of heritage buildings in the vicinity, but must preserve heritage significance and integrity with complementary and respectful building form, proportions, scale, style, materials, colours and finishes and building/street alignments.*

Comment

The heritage items (in exception of the all stone kerbs) are located to the eastern side of Lawson Place, with their front elevations facing Quinton Road and their rear elevations facing Lawson Place, which consist of secondary access points (e.g. for vehicles). These heritage items are known as 'Item I215 - Group of Houses - 1–23, 25 and 27 Quinton Road and 1–7 Augusta Road'. The proposal is not considered to detrimentally impact the heritage significance of those items as it cannot be easily viewed from Quinton Road or Augusta Road. It is considered that the heritage significance is most prominent when viewed from Quinton or Augusta Road, not Lawson Place. In addition, the nature of Lawson Place is similar to that of a narrow 'one-way' lane, it would be considered anyone using this lane way would be the residents of the street.

The proposal will result in amending the roof pitch to the northern and southern roof elevations to allow for the habitable attic space. The materials used for the roof will maintain the existing roof tile and colour, and is not considered to significantly disrupt the character of the streetscape of heritage items within the vicinity. It is noted that various building typology's exists with the surrounding area, these being dwelling houses, residential flat buildings, dual occupancy and secondary dwellings, which all exhibit different roof styles such as flat roofing, pitched roofing and skillion roofing. The heritage item directly across from the subject site includes a flat style roof and terrace.

Whilst it is acknowledged that the existing dwelling on the subject site is of a design that dates back to the early 1900s, the dwelling has been subject to previous unsympathetic alterations and is not heritage listed or within a conservation area. The main character of the building remain, including some of the front façade. The amendment to the roof will not detrimentally impact the front gable or the front façade of the building in terms of the external walls or window features. The roofing change will provide a clear distinction between the existing features and what is new, whilst still incorporating existing elements such the existing roof style and colour of the dwelling house.

The proposal as a whole will not contribute to unacceptable amenity impacts such as spatial separation, privacy, view loss and/or solar access upon the surrounding heritage items. Council's

Heritage Advisor supports the proposal subject to a recommended condition to reduce the roof pitch to the north and south roof planes from 55 degrees to 46 degrees, to further limit any impacts to surrounding heritage items and to better relate to the existing roof form.

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

Description of Non-Compliance

Clause 4.1.2.2 Number of Storeys states that buildings must not exceed two (2) storeys. The proposal consists of converting an existing roof space into an attic to accommodate for a habitable room (i.e. bedroom with ensuite), including associated dormer style windows. Despite the inclusion of an attic space, the overall building will still maintain two (2) storeys.

A 'storey' as defined under the Manly LEP 2013 *means a space within a building that is situated between one floor level and the floor level next above, or if there is no floor above, the ceiling or roof above, but does not include—*

- (a) a space that contains only a lift shaft, stairway or meter room, or
- (b) a mezzanine, or
- (c) **an attic.**

An 'attic' as defined under the Manly LEP 2013 *means any **habitable space**, but not a separate dwelling, contained wholly within a roof above the ceiling line of the storey immediately below, except for minor elements such as dormer windows and the like.*

Therefore, the proposal is compliant with the number of storeys required for the subject site.

Clause 4.1.2.3 Roof Height stipulates that the maximum roof pitch must be generally no steeper than 35 degrees. The proposed roof pitch is approximately 55 degrees, to allow for the habitable space, with the attic. Council's Heritage Advisor recommends that the roof pitch be lowered to 46 degrees. Refer to Heritage Advisor Referral for more detail.

Note: The wall height will remain unchanged, which exhibits an existing non-compliance with the required numerical controls (i.e. south: 7.1m and the north: 6.8m).

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 (including the non-compliant elements listed above) have been assessed against these objectives under Clause 4.6, elsewhere in this report. In summary, the proposed building height has been found to achieve the objectives of Clause 4.3. Therefore, the application is supported on merit.

4.1.3 Floor Space Ratio (FSR)

The proposed works result in a non-compliant floor space ratio (see 'Clause 4.6 Exceptions to development standard' for further discussion).

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

Description of Non-Compliance

Clause 4.1.4.2 Side setbacks and secondary street frontages stipulates that the setbacks between any part of a building and the side boundary must not be less than one third of the height of the building, in this instance a side setback of 2.2 metres is required to the north and 2.3 metres to the south.

The proposal in relation to the roof extension and proposed attic space provides a setback of 2.1 metres - 2.4 metres to the north, with a variation of 4.6%. The proposed south setbacks are compliant.

This clause also stipulates that new windows from habitable dwellings that face the side boundary are to be setback at least 3.0 metres. The proposed skylight to the north is setback 2.1 metres from the boundary.

Clause 4.1.4.4 Rear Setbacks requires the distance between any part of a building and the rear boundary to be no less than 8.0 metres. The proposed attic space provides a rear setback of 6.5 metres.

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

As the works are located within the existing building footprint of the dwelling, no changes to the landscape character shall occur. The spatial proportions, particularly along the western side of Lawson Place are varied but minor (little separation). As the proposal will be located within the roof of the dwelling and provides greater setback than the existing walls, it is considered that the attic space provides acceptable separation from adjoining properties. The streetscape character, (although consisting of heritage items to the eastern side of Lawson Place) is considered overall to be of mixed typology (i.e. dwelling house, residential flat building, dual occupancy and secondary dwelling). The facades of the heritage items that adjoin the eastern side of Lawson Place are predominantly the rear elevations which consists of secondary access points (e.g. for vehicles), with their front elevations facing Quinton Road. The proposal is not considered to detrimentally impact the heritage significance of those items as it cannot be viewed from Quinton Road. In addition, the nature of Lawson Place is similar to that of a narrow 'one-way' lane.

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 will provide for acceptable privacy levels, with new windows consisting of two skylights, one small bathroom window to the rear and the larger windows facing the street. It is not considered that these windows will result in direct overlooking into any adjoining living space or private open spaces. The proposal was accompanied by solar access diagrams, which demonstrate minor changes, overall the solar access will remain generally the same as existing. It is not considered that the works will result in unacceptable view loss or traffic conditions.

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

Comment

The proposal will not detrimentally impact upon the flexibility in the siting of buildings.

Objective 4) To enhance and maintain natural features by:

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

Comment

The proposal will not alter the existing landscaping or natural features on site.

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

The subject site is not located within bush fire prone land and therefore this objective is not relevant.

Having regard to the above assessment, it is concluded that the objectives of the control are achieved. Therefore, the application is supported on merit in this particular circumstance.

4.1.7 First Floor and Roof Additions

Clause 4.1.7.2 Habitable Rooms in the Roof Structure indicates that any alterations and additions to a building which existed prior to 2007 may involve habitable rooms within an existing roof structure that is above the maximum wall and roof height; subject to the rooms not detracting from the character or integrity of the roof structure and not adversely impacting on the amenity of adjacent and nearby properties and the streetscape. Similarly, alterations and additions which exceed the maximum height must not increase the overall height of the building. Consideration may be given in this paragraph to the application of LEP clause 4.6 in considering exceptions to the LEP Building Height standard.

The proposal consists of converting an existing roof space into a habitable attic space, which will include altering the roof pitch and the addition of dormer style windows within the roof structure. The dwelling house existed prior to 2007, and exhibits existing non-compliances to the wall height and building height numerical requirements under the Manly LEP and DCP 2013. The existing maximum building height (RL 56.11) will remain unchanged, despite the changes to the roof. The proposed works will be located beneath the existing roof ridge level, however will exhibit non-compliance with the 8.5 metre building height standard. The building height non-compliance is discussed under 'Clause 4.6 Exceptions to development standards' elsewhere in this report. Although, the existing roof pitch will be changed to accommodate the works, the materials used for the roof will maintain the existing roof tile and colour, and is not considered to significantly disrupt the character of the streetscape of heritage items within the vicinity (as discussed throughout this report). The proposal as a whole will not contribute to unacceptable amenity impacts such as spatial separation, privacy, view loss and/or solar access. The proposal is considered to generally comply with the requirements under this clause, subject to conditions.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$ 990 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 198,000.

CONCLUSION

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

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

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

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

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

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.

PLANNING CONCLUSION

This proposal, for the alterations and additions to a dwelling house has been referred to the Development Determination Panel (DDP) due to the proposal contravening both Clause 4.3 Height of buildings and Clause 4.4 Floor Space Ratio (FSR) of the Manly Local Environmental Plan 2013 (MLEP 2013) by more than 10.0%.

The development application was notified for fourteen (14) days, as stated within Council's Community Participation Plan, with no submissions received. A set of amended were received during the assessment process to address concerns (as discussed within 'Site History') elsewhere in this report. The amended plans did form the basis of this assessment.

The critical assessment issues relate primarily to the Clause 4.6 written request to vary the height of buildings and Floor Space Ratio, with additional elements to be addressed such as various controls under the MDCP 2013 relating to built form and character, as well as the heritage considerations and impacts to the heritage items within the vicinity.

On balance, and considering the preceding detailed assessment of the application, the development (subject to conditions) provides a design that performs well against the objectives of the relevant controls and will not result in unacceptable impacts on adjoining or nearby properties, the natural environment or the integrity of the nearby heritage items.

Accordingly, the application is referred to the DDP with a recommendation for **approval**, subject to recommended conditions.

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

RECOMMENDATION

That Northern Beaches Council as the consent authority permits a contravention of clause 4.3 Height of Building and 4.4 Floor Space Ratio development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2023/0869 for Alterations and additions to a dwelling house on land at Lot B DP 345901, 3 Lawson Place, MANLY, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

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 210	Issue A	Demolition Plan	Breakspear Architects	10 November 2023
DA 211	Issue A	Existing and Proposed First Floor	Breakspear Architects	10 November 2023
DA 220	Issue B	Proposed Attic Plan	Breakspear Architects	16 October 2023
DA 221	Issue B	Proposed Roof	Breakspear Architects	16 October 2023
DA 300	Issue B	Proposed South & North Elevations	Breakspear Architects	16 October 2023
DA 301	Issue B	Proposed East & West Elevations	Breakspear Architects	16 October 2023
DA 400	Issue B	Proposed Sections	Breakspear Architects	16 October 2023
DA 500	Issue A	Material Palette	Breakspear Architects	20 April 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate (No. A469713_04)	-	Aspire Sustainability Consulting Pty Ltd.	19 October 2023
Geotechnical Assessment (Ref. GG11134.001)	-	Green Geotechnics Pty Limited.	18 July 2023
Waste Management Report	-	Toby Breakspear, Breakspear Architects	14 July 2023

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

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

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

2. **Compliance with Other Department, Authority or Service Requirements**

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	28 July 2023

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

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

3. **Prescribed Conditions**

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

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work

must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

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

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

Reason: Legislative requirement.

4. General Requirements

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

Demolition and excavation works are restricted to:

 - 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).
- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1

per 20 persons.

- (f) Prior to the release of the Construction Certificate, payment of the 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 \$990.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$198,000.00.

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

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

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

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

6. Security Bond

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

7. Stormwater Drainage Disposal

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

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

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

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

Reason: To ensure satisfactory management of stormwater.

8. 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.

9. **Reduction to Roof Pitch**

The roof pitch, to the north and south roof planes, are required to be reduced to become a maximum of 46 degrees, in order to reduce the impact of the proposed works.

Details, demonstrating compliance with this condition, are to be submitted to Council's heritage advisor prior to the issue of the construction certificate.

Reason: To minimise the visual impact upon the integrity and character of the existing building and the significance of the heritage items.

10. **Waste Management Plan**

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

Details demonstrating compliance must be provided to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

11. **Compliance with Standards**

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

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

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

12. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

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

13. **Sydney Water "Tap In"**

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

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

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

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

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

14. **Blank condition for prior construction certificate**

The external finish to the roof shall consist of materials similar to that of the existing roof tile and colour scheme.

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.

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. **Geotechnical Requirements**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

17. **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.

18. **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.

19. **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

20. **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.

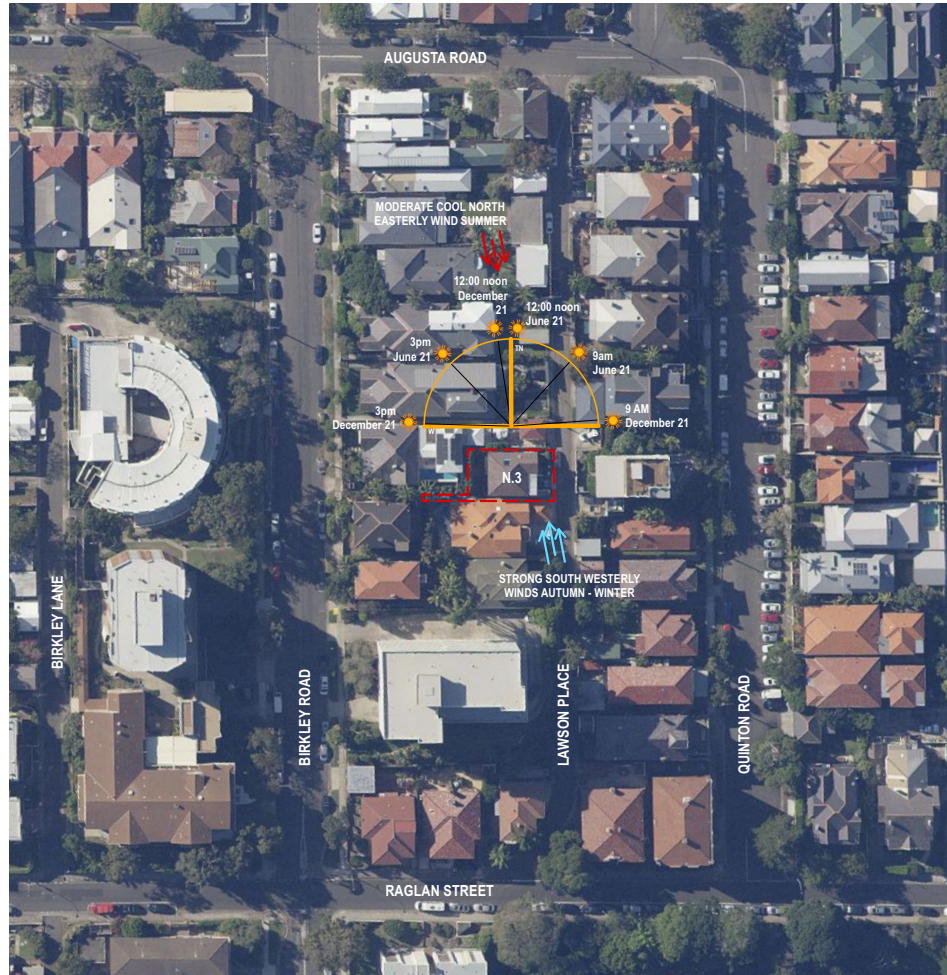
Reason: To ensure satisfactory management of stormwater.

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

21. **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.

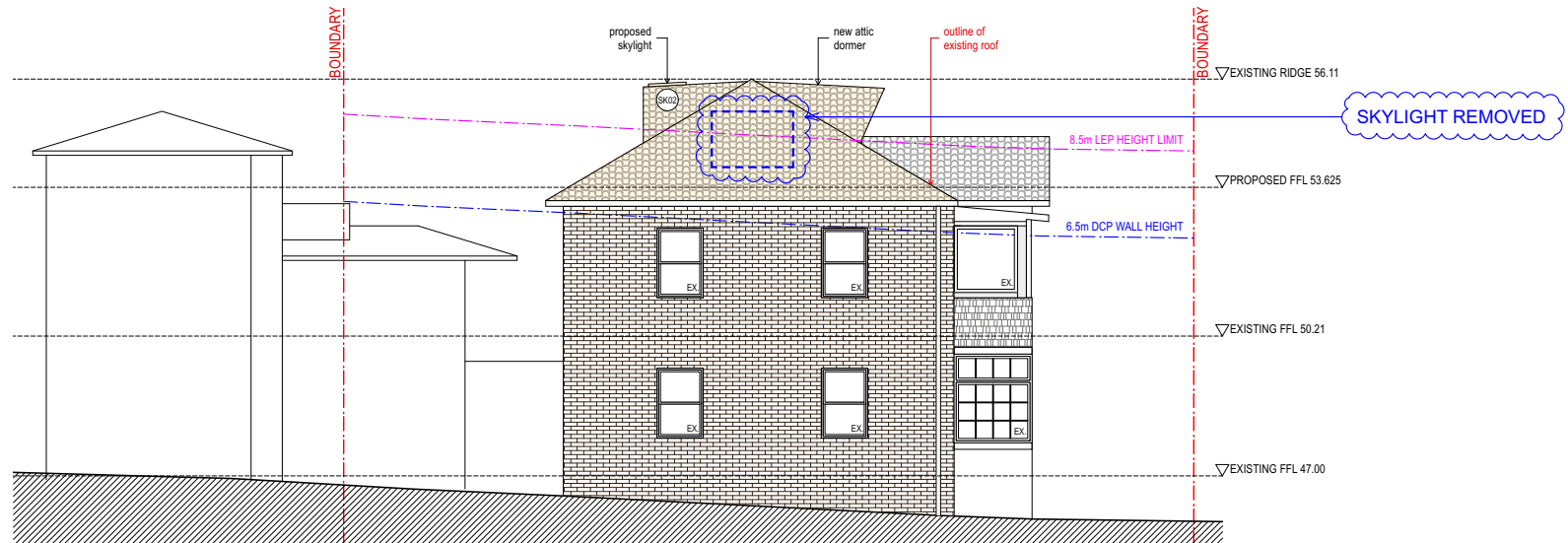


1 LOCATION PLAN
Scale: 1:1000

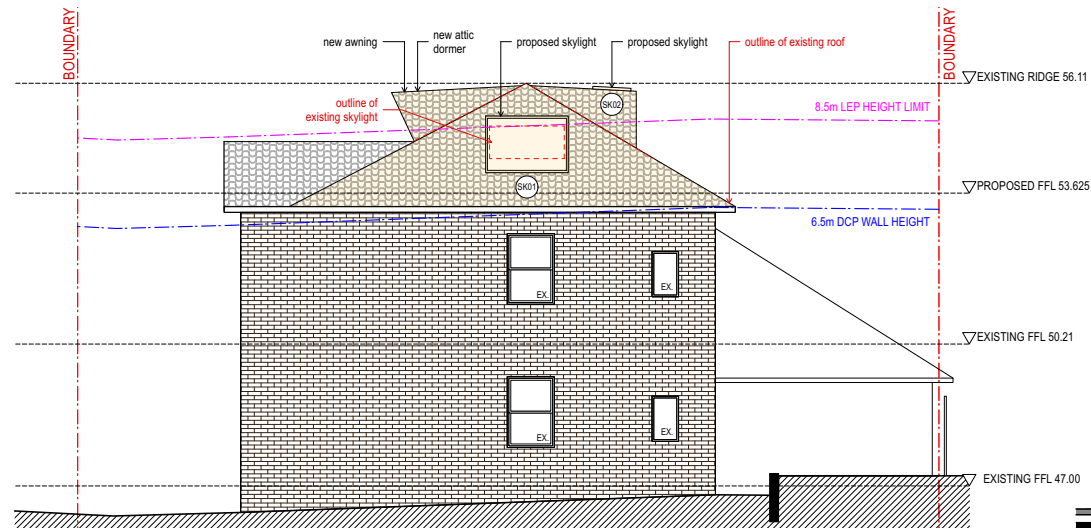


2 SITE PLAN
Scale: 1:500

A REV	20/02/23	DA SUBMISSION DATE	DESCRIPTION		NOT FOR CONSTRUCTION		<p>This drawing should be read in conjunction with all relevant contracts, specifications, reports and drawings. Do not scale drawings. Dimensions govern. Verify all dimensions on site before construction. Copyright of this drawing is vested in Breakspear Architects Pty Ltd.</p>	<p>ARCHITECT BREAKSPEAR ARCHITECTS ABN 81 601 670 981 ACN 601 670 981 Level 1, 13 The Corso, Manly NSW 2095 P: 0421 681 146 E: studio@breakspear.com</p> <p>CLIENT Julie and Graeme Blockley 3 Lawson Place Manly NSW, 2095</p>	<p>PROJECT 3 LAWSON PLACE, MANLY</p> <table><tr><td>PROJECT NUMBER</td><td>DRAWN</td><td>CHECKED</td><td>SHEET SCALE</td><td>SHEET SIZE</td></tr><tr><td>1302</td><td>AB</td><td>TB</td><td>1:1000 1:500</td><td>A3</td></tr></table>	PROJECT NUMBER	DRAWN	CHECKED	SHEET SCALE	SHEET SIZE	1302	AB	TB	1:1000 1:500	A3	<p>SHEET TITLE SITE PLAN ANALYSIS</p> <table><tr><td>SHEET NUMBER</td><td>ISSUE</td></tr><tr><td>DA 100</td><td>A</td></tr></table>	SHEET NUMBER	ISSUE	DA 100	A
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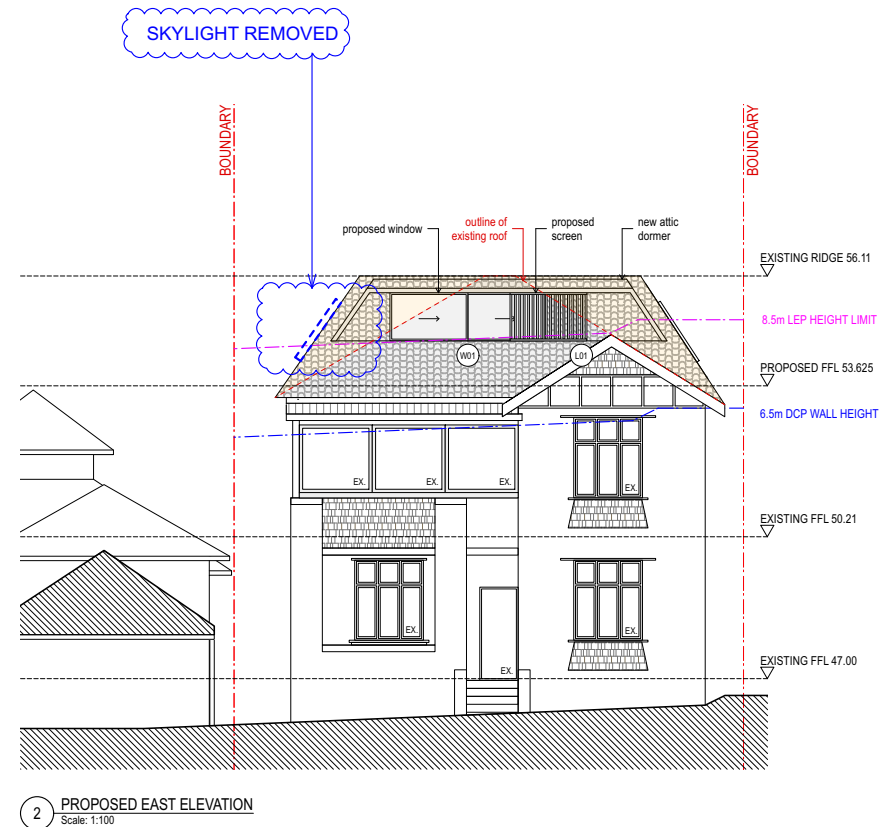
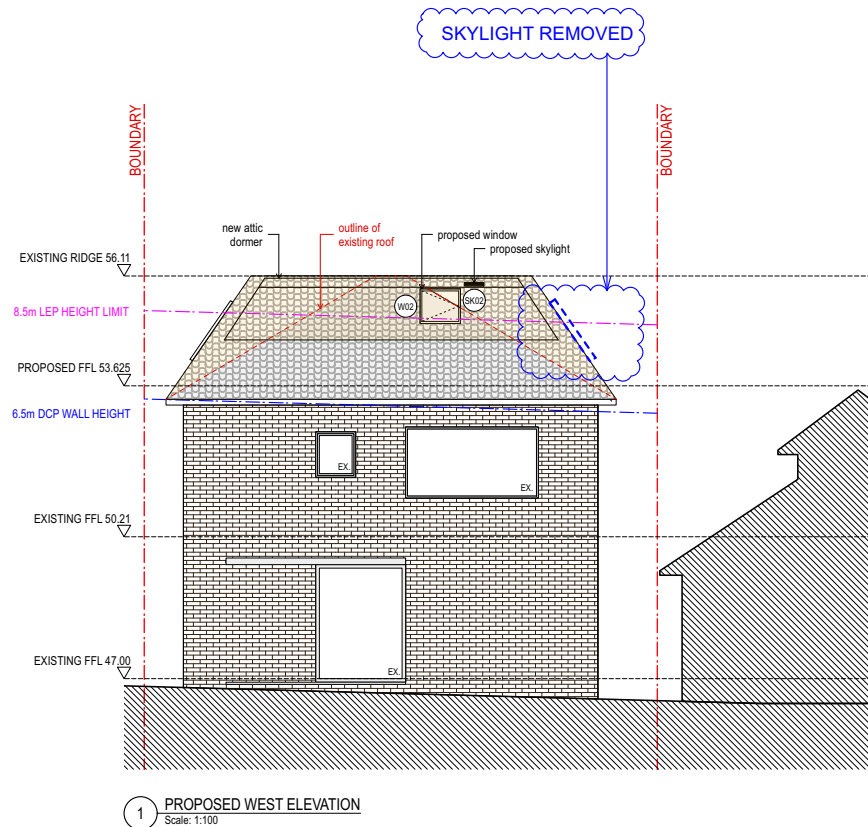
1 PROPOSED SOUTH ELEVATION
Scale: 1:100



2 PROPOSED NORTH ELEVATION
Scale: 1:100

— PROPOSED WALL
— EXISTING WALL
- - - DEMOLISHED WALL
— LANDSCAPE WORKS
— ADDITIONS TO EXISTING
— ALTERATIONS TO EXISTING

<p>B A REV</p>	<p>18/10/23 20/4/23 DATE</p>	<p>DA AMENDMENT DA SUBMISSION DESCRIPTION</p>	<p>NOT FOR CONSTRUCTION</p>	<p>1:100 0 1 2 5</p>	<p>ARCHITECT BREAKSPEAR ARCHITECTS ABN 61 601 670 981 ACN 601 670 981 Level 1, 15 The Corso, Manly NSW 2095 P 0421 681 146 E studio@breakspear.com CLIENT Julie and Graeme Blockley 3 Lawson Place Manly NSW, 2095</p>	<p>PROJECT 3 LAWSON PLACE, MANLY</p>	<p>PROJECT NUMBER 1302</p>	<p>DRAWN LH</p>	<p>CHECKED TB</p>	<p>SHEET SCALE 1:100</p>	<p>SHEET SIZE A3</p>	<p>SHEET TITLE PROPOSED SOUTH & NORTH ELEVATIONS</p>	<p>SHEET NUMBER DA 300</p>	<p>ISSUE B</p>
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— PROPOSED WALL
 — EXISTING WALL
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 — LANDSCAPE WORKS
 — ADDITIONS TO EXISTING
 — ALTERATIONS TO EXISTING

balance.
PLANNING

clause 4.6 variation request [FSR]

adjust the roof form of the
existing dwelling to facilitate the
introduction of habitable floor
space

3 Lawson Place, Manly

Client Graeme Blockley
Project No. 2023-0143
Document Type clause 4.6 variation request [FSR]
Document Author Ryan Gill

Revision	Amendment Description	Date
Final	-	9.06.2023
Rev 1	Updated in response to council RFI (dated 13.10.2023)	18.10.2023

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Disclaimer

This report is dated 18 October 2023 and incorporates information and events up to that date only and excludes any information arising, or event occurring, after that date which may affect the validity of Balance Planning's opinion in this report. Balance Planning prepared this report on the instructions, and for the benefit only, of Graeme Blockley (Instructing Party) for the purpose of supporting a development application (Purpose) and not for any other purpose or use.

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This report has been prepared with due care and diligence by Balance Planning and the statements, opinions and recommendations given by Balance Planning in this report are given in good faith and in the reasonable belief that they are correct and not misleading, subject to the limitations above.

INTRODUCTION

This clause 4.6 variation request [FSR] has been prepared to support an application to adjust the roof form of the existing dwelling to facilitate the introduction of habitable floor space at 3 Lawson Place, Manly.

The proposal

Key aspects of the proposal include altering the roof pitch (maintaining the existing ridge RL) and introducing two dormer-style projections to create a habitable space consisting of bedroom and ensuite bathroom.

Land use zone

Manly Local Environmental Plan 2013 (MLEP) applies to the site. The site is within Zone R1 General Residential and the proposed development is permitted with development consent.

An extract of the zoning map is provided at Figure 1.



Figure 1 | Zoning Map
extract (Source: NSW Govt.)

The variation

Clause 4.4(2) of MLEP states that the maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the *Floor Space Ratio Map*. The *Floor Space Ratio Map* indicates that the maximum FSR permitted at the site is 0.6:1.

An extract of the *Floor Space Ratio Map* is provided at Figure 2.



Figure 2 | FSR Map extract
(Source: NSW Govt.)

The site area is 240.3sqm and consequently the maximum permitted gross floor area (GFA) at the site is 144.18sqm.

The GFA attributable to the attic is 24sqm. The total GFA at the site incorporating the combined areas of the dwelling and attic is 178sqm (0.74:1). The post-development GFA will exceed permitted GFA by 33.82sqm which equates to a percentage variation of 23.5%.

Clause 4.4 is not excluded from the operation of clause 4.6.

Calculating GFA

A calculation sheet for the proposed development (Sheet DA700) is provided at **Attachment A**.

The calculation sheets identify areas that have been accounted for in the calculation and is consistent with the method endorsed in *Connoisseur Investments Pty Ltd v Sutherland Shire Council* [2020] NSWLEC 1181 ('Connoisseur Investments').

Purpose of the document

The purpose of this document is to satisfy the conditions of clause 4.6 of MLEP which requires the submission of a written request from the applicant justifying contravention of the development standard.

This request demonstrates that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard.

ADDRESSING CLAUSE 4.6

This section of the written request addresses the key elements of clause 4.6 in turn.

Compliance is unreasonable or unnecessary [cl 4.6(3)(a)]

Cl. 4.6(3)(a) requires that the written request from the applicant demonstrate that compliance with the standard is unreasonable or unnecessary in the circumstances of the case.

The objectives of the development standard are achieved

Here we seek to demonstrate that compliance with the development standard is unreasonable or unnecessary by invoking one of the “tests” established by the NSW Land and Environment Court in *Four2Five Pty LTD v Ashfield Council* [2015]NSWLEC 90, applying the analysis in *Wehbe v Pittwater Council* [2007]NSWLEC 827, which explains that if the objectives of the development standard are achieved notwithstanding non-compliance with the standard, strict compliance with that standard may be unreasonable or unnecessary.

The objectives of the floor space ratio development standard (clause 4.4) and consideration of each in the context of the proposal is provided at Table 1.

Table 1 | Objectives of the development standard

Objective	Comment
(a) To ensure the bulk and scale of development is consistent with the existing and desired streetscape character.	<p>The planning instruments have not outlined a specific desired streetscape character statement for this location. However, Part 3.1.1 Streetscape (residential areas) of <i>Manly Development Control Plan 2013</i> (MDCP) explains that [emphasis added]:</p> <p>“Streetscape represents the relationship between buildings, landscape, and open spaces in the street scene. Development should recognise predominant streetscape qualities, such as building form, scale, patterns, materials and colours and vegetation which contributes to the character of the local area.”</p> <p>The streetscape character of the street block is considerably diverse in terms of housing typology, building scale, building setbacks, and landscape treatment. In our opinion, it is the <i>absence</i> of a uniform building alignment, the <i>range</i> of building heights, and <i>irregularity</i> of landscaping treatments that define streetscape character in Lawson Place.</p> <p>The proposed roof alterations will not alter the spatial relationship between the</p>

Objective	Comment
	<p>external walls of the dwelling and property boundaries, will not increase building site cover or reduced landscape area, and will not increase the overall height of the dwelling because alterations occur below the existing ridge RL.</p> <p>The attic space will be contained within the envelope of the altered roof form with modest dormer-style projections. The roof form will continue to read as a pitched roof and the dormer-style projections will have limited street presence. The altered roof will be clad in tile to match the existing.</p> <p>It follows that the addition GFA will have little impact on the perceived volume of the building and the bulk and scale of the dwelling post-development will remain compatible with streetscape character which, as we have explained, is defined by a diversity of dwelling typologies of dramatically varying scale, and irregular setback pattern.</p> <p>The proposed development satisfies objective (a) despite FSR breach.</p>
<p>(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.</p>	<p>The proposed roof alterations are designed to ensure that additional roof volume is modest with limited street presence such that the development does not overwhelm or impose on the streetscape.</p> <p>The addition will not obscure or impinge on views of or from important landscape or townscape features, despite FSR non-compliance, and satisfies objective (b).</p>
<p>(c) To maintain an appropriate visual relationship between new development and the existing character and landscape of the area.</p>	<p>The proposed roof alterations will integrate well with the existing built form character and landscape of the street block which is defined by a diversity of dwelling typologies of dramatically varying scale, and irregular setback pattern.</p> <p>The proposed roof alterations will not change the spatial relationship between the external walls of the dwelling and property boundaries, will not increase building site cover or reduce landscaped area, and will not increase the overall height of the dwelling as works occur below the existing ridge RL.</p> <p>The attic space will be contained within the envelope of the altered roof form with modest dormer-style projections. The roof</p>

Objective	Comment
	<p>form will continue to read as a pitched roof and the dormer-style projections will have limited street presence because they are offset ~4m from the eastern-most edge of the roof. The altered roof will be clad in tile to match the existing.</p> <p>The above discussion demonstrates that the proposed roof alteration will present as a recessive feature in the streetscape (to the extent that is visible at all), will retain the pitched roof style prominent in the locality, and will deliver a built form outcome that is compatible with the existing character and landscape of the area, despite FSR non-compliance. We find that the proposal aligns with objective (c).</p>
<p>(d) To minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain.</p>	<p>The proposed roof alterations and associated window openings are designed and arranged to mitigate adverse impacts on adjoining land and the public domain as follows.</p> <ul style="list-style-type: none"> • The dwelling to the west at 38 Birkley Road incorporates an east-facing upper-level bedroom and associated deck. This bedroom and deck have an eastern outlook which will not be obscured by the proposed roof alterations. There are no high-value public or private views obtained through the site that will be compromised by the roof alterations. The development, despite height breach, will have no adverse view impact. • The roof alterations and proposed skylights / window openings are designed to mitigate the potential for cross-viewing and overlooking. The proposed skylights / windows do not provide direct line of sight into neighbouring habitable room windows or private open space areas. Resident privacy will be preserved notwithstanding FSR breach. • Shadow diagrams supplied at Attachment B indicate that the proposed dwelling will cast shadow toward the property at 2 Lawson Place. However, shadow will largely fall over roof surfaces and will have no impact on the

Objective	Comment
	ground level private open space area or living room windows. The preceding discussion and supporting documentation demonstrate that the development will have no adverse impact on the use or enjoyment of neighbouring land or public spaces. The development aligns with objective (d) despite FSR variation.
(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.	n/a

The objectives of clause 4.4 are achieved notwithstanding non-compliance as outlined above. Strict compliance with clause 4.4 is unreasonable and unnecessary in the circumstances of the case. This discussion responds to cl.4.6(3)(a).

Sufficient environmental planning grounds [cl.4.6(3)(b)]

Cl. 4.6(3)(b) requires that the written request from the applicant demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard.

Here we explain that there are sufficient environmental planning grounds to justify contravening the development standard. The environmental planning grounds described below are specific to the site and to the development:

- The proposed GFA is relatively modest (24sqm) and will be concealed within the envelope of the altered roof form. The proposed roof alterations will not present as an additional storey. The altered roof and dormer-style projections will not contribute in any significant way to perceived building volume.
- The eastern face of proposed dormer projection is ~4m from the eastern-most edge of the roof form. Consequently, the altered roof form will not be discernible from Lawson Place at the property frontage. The image at Figure 3 demonstrates that the existing roof form is entirely concealed when viewed from street level and we anticipate the altered roof form will be similarly concealed. Additionally, we anticipate that the altered roof form will have limited visibility as one moves along Lawson Place from the south owing to local terrain (the southern section of Lawson Place being downslope of the site).



Figure 3 | View
from Lawson Place
(Source: Balance
Planning)

- The immediate context is characterised by a broad variety of housing typologies ranging from detached dwellings to residential flat buildings. Building density and volume is equally varied. The nearby brick “walk-ups” and scattered late century flat buildings evident in the street block all exhibit a volume far greater than the 0.6:1 encouraged by the development standard. The image at Figure 4 shows the subject dwelling (roof visible) in the middle-ground and nearby multi-storey residential flat buildings in the near background. In our opinion, the additional roof volume proposed is unlikely to have any consequence in terms of streetscape character where the locality consists of such a diverse and irregular pattern of development involving numerous buildings with substantially greater volume compared to the proposed development.



Figure 4 | Built
form context
(Source: Balance
Planning)

- The FSR non-compliant element of the building does not have an adverse impact on neighbour amenity:

- The dwelling to the west at 38 Birkley Road incorporates an east-facing upper-level bedroom and associated deck. This bedroom and deck have an eastern outlook which will not be obscured by the proposed roof alterations. There are no high-value public or private **views** obtained through the site that will be compromised by the roof alterations. The development, despite FSR breach, will have no adverse view impact.
- The roof alterations and proposed skylights / window openings are designed to mitigate the potential for cross-viewing and overlooking. The proposed skylights / windows do not provide direct line of sight into neighbouring habitable room windows or private open space areas. Resident **privacy** will be preserved notwithstanding FSR breach.
- Shadow diagrams supplied at **Attachment B** indicate that the proposed dwelling will cast **shadow** toward the property at 2 Lawson Place. However, shadow will largely fall over roof surfaces and will have *no* impact on the ground level private open space area or living room windows.

We have explained that there are sufficient environmental planning grounds to justify the proposed contravention of clause 4.3. The environmental planning grounds outlined are not general propositions but rather are specific to the site and the proposed development.

The development is in the public interest [cl.4.6(4)(a)]

Cl. 4.6(4)(a) requires that the consent authority be satisfied the applicant's request has adequately addressed the matters set out at subclause (3), and that the development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the applicable land use zone.

We have adequately addressed the matters set out at subclause (3) in the previous sections of this report. We submit that the proposed development aligns with the public interest because it is consistent with the objectives for the building height standard (outlined in Table 1 above) and the objectives for Zone R1 as outlined in Table 2 below.

Table 2 | Objectives of the zone

Objective	Comment
• To provide for the housing needs of the community.	The application proposes alterations and additions to an existing dwelling. The works will enhance housing stock in Manly and is consistent with the objective to provide for the housing needs of the community.
• To provide for a variety of housing types and densities.	The application relates to an existing detached dwelling which is permissible in Zone R1 and is a suitable residential typology for the property.

Objective	Comment
	The proposed development is consistent with the objective to provide a range of housing types and densities.
• To enable other land uses that provide facilities or services to meet the day to day needs of residents.	The proposal is for a dwelling. This zone objective is not relevant to the proposal.

The proposed development aligns with the objectives for development in Zone R1 for the reasons outlined above, despite FSR breach, and is in the public interest.

SUMMARY

This clause 4.6 variation request [FSR] has been prepared to support an application to adjust the roof form of the existing dwelling to facilitate the introduction of habitable floor space at 3 Lawson Place, Manly.

This written request seeks to vary clause 4.4 of MLEP. The total GFA at the site incorporating the combined areas of the dwelling and attic is 178sqm (0.74:1). The post-development GFA will exceed permitted GFA by 33.82sqm which equates to a percentage variation of 23.5%.

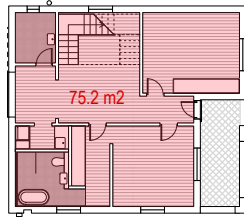
We have demonstrated that strict compliance with the development standard is unnecessary and unreasonable in the circumstances of the case given the development achieves the objectives of the standard notwithstanding non-compliance.

Further, we have explained that there are sufficient environmental planning grounds to justify contravening the development standard, namely that additional GFA will be contained within the altered roof envelope and will have limited visibility from the public realm. We have established that the building will have no adverse impact on neighbour amenity.

Finally, this written request demonstrates that the development is in the public interest as it is consistent with the objectives of the standard and the objectives of Zone R1.

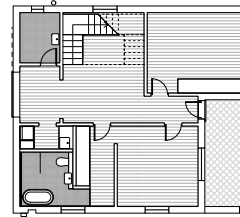


ATTACHMENT A | CALCULATION PLANS



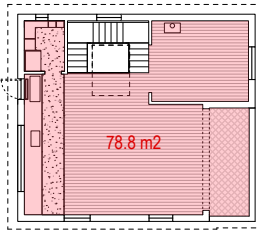
Existing 75.2 m2

1 EXISTING GROUND FLOOR - AREA DIAGRAM
Scale: 1:200



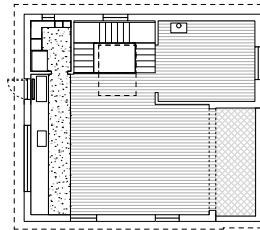
Existing 75.2 m2 + Proposed 0 m2

3 PROPOSED GROUND FLOOR - AREA DIAGRAM
Scale: 1:200



Existing 78.8 m2

2 EXISTING FIRST FLOOR - AREA DIAGRAM
Scale: 1:200

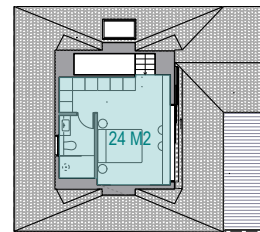


Existing 78.8 m2 + Proposed 0 m2

4 PROPOSED FIRST FLOOR - AREA DIAGRAM
Scale: 1:200

EXISTING

Existing Ground Floor GFA	75.2 m2
Existing First Floor GFA	78.8 m2
Total Existing GFA	154 m2
Site area	240.3 m2
Max FSR	0.6:1
Existing FSR	0.67:1



Proposed 24 m2

5 PROPOSED ATTIC - AREA DIAGRAM
Scale: 1:200

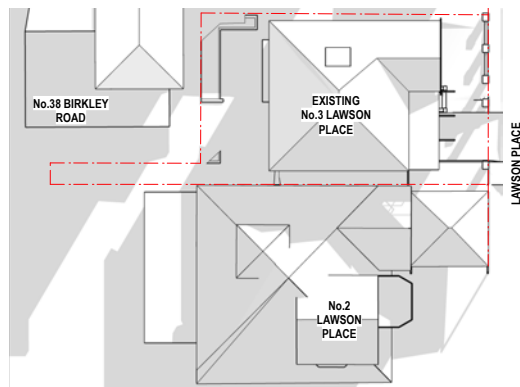
PROPOSED

Proposed Ground Floor GFA	Existing 75.2 m2	+	Proposed 0 m2
Proposed First Floor GFA	Existing 78.8 m2	+	Proposed 0 m2
Proposed Attick GFA	Existing 0 m2	+	Proposed 24 m2
Total Proposed GFA	Existing 154 m2	+	Proposed 24 m2
=>	178 m2		
Proposed FSR	0.74:1		

B A REV	16/10/23 20423 DATE	DA AMENDMENT DA SUBMISSION DESCRIPTION	 NOT FOR CONSTRUCTION	 <small>This drawing should be read in conjunction with all relevant contracts, specifications, reports and drawings. Do not scale drawings dimensions given. Verify all dimensions on site before construction. Copyright of this drawing is vested in Breakspear Architects pty ltd.</small>	ARCHITECT BREAKSPEAR ARCHITECTS <small>ABN 61 601 670 991 ACN 601 670 991 Level 1, 13 The Corso, Manly NSW 2095 P 0421 601 146 E studio@breakspear.com</small>	PROJECT 3 LAWSON PLACE, MANLY	SHEET TITLE AREA SCHEDULE	PROJECT NUMBER 1302	DRAWN AB	CHECKED TB	SHEET SCALE 1:200	SHEET SIZE A3	SHEET NUMBER DA 700	ISSUE B



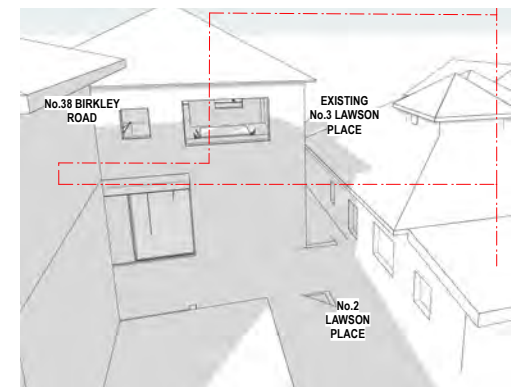
ATTACHMENT B | SHADOW DIAGRAMS



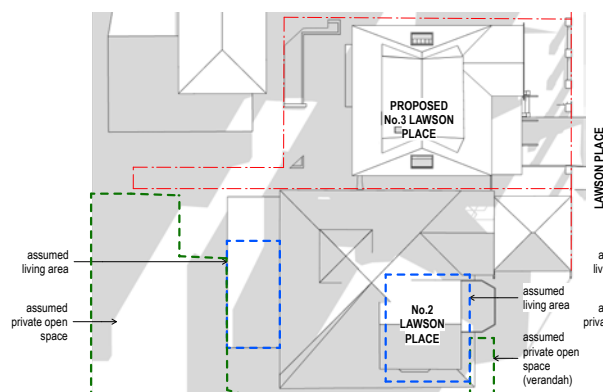
1 EXISTING PLAN: JUNE 21 - 9AM
Scale: 1:300



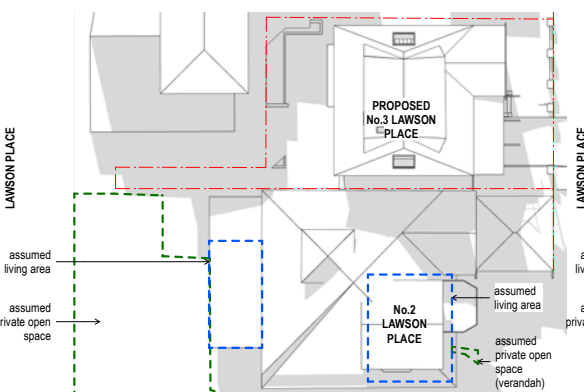
2 EXISTING PLAN: JUNE 21 - 12PM
Scale: 1:300



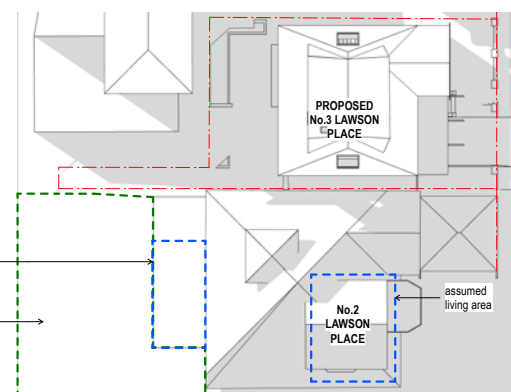
3 EXISTING PLAN: JUNE 21 - 3PM
Scale: 1:300



4 PROPOSED PLAN: JUNE 21 - 9AM
Scale: 1:300



5 PROPOSED PLAN: JUNE 21 - 12PM
Scale: 1:300



6 PROPOSED PLAN: JUNE 21 - 3PM
Scale: 1:300

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

Due to the limited available survey information for neighbouring properties, the location of private open space of site No.2 Lawson place has been assumed based on aerial images. The location of living room windows has been assumed based on real estate plans.

--- ASSUMED NEIGHBOURING PRIVATE OPEN SPACE OF NO.2 LAWSON PLACE WITH SOLAR ACCESS
--- ASSUMED LIVING AREA BASED ON REAL ESTATE PLANS

20423
DATE

DA SUBMISSION
DESCRIPTION

NOT FOR CONSTRUCTION

1

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300

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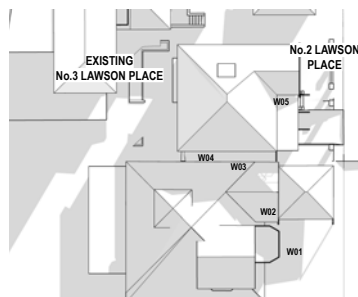
ARCHITECT
BREAKSPEAR ARCHITECTS
ABN 61 601 670 991 ACN 601 670 991
Level 1, 13 The Corso, Manly NSW 2095
P 0421 661 146 E: studio@breaksp.com
CLIENT
Julie and Graeme Blockley
3 Lawson Place
Manly NSW, 2095

PROJECT
3 LAWSON PLACE, MANLY

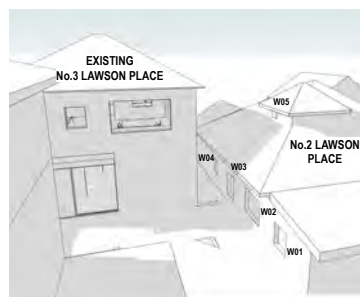
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1302	AB	TB	1:300	A3

SHEET TITLE
SHADOW DIAGRAMS - PLANS

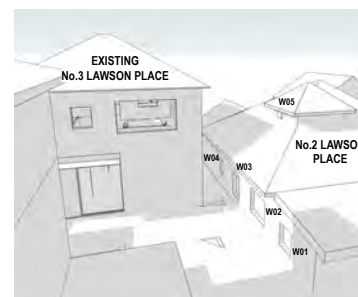
SHEET NUMBER	ISSUE
DA 600	A



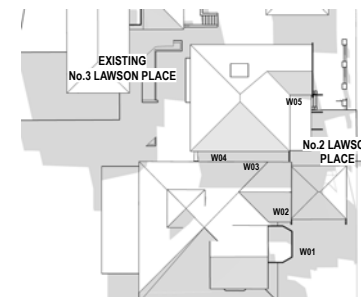
1 EXISTING ELEVATION: JUNE 21 - 9AM
Scale: NTS



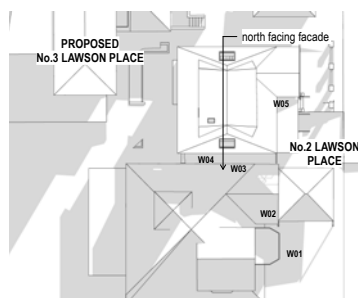
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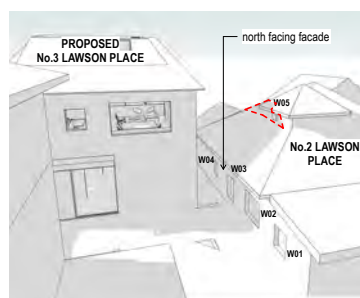
3 EXISTING ELEVATION: JUNE 21 - 11AM
Scale: NTS



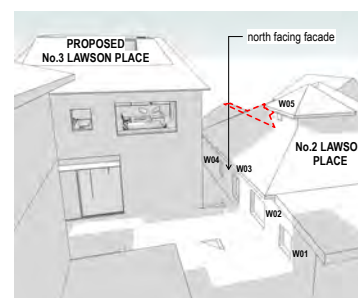
4 EXISTING ELEVATION: JUNE 21 - 12PM
Scale: NTS



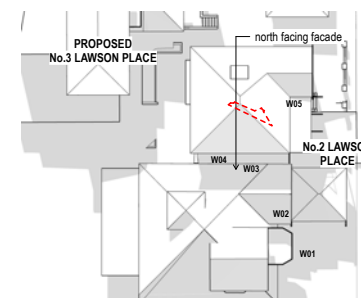
5 PROPOSED ELEVATION: JUNE 21 - 9AM
Scale: NTS



6 PROPOSED ELEVATION: JUNE 21 - 10AM
Scale: NTS



7 PROPOSED ELEVATION: JUNE 21 - 11AM
Scale: NTS




8 PROPOSED ELEVATION: JUNE 21 - 12PM
Scale: NTS

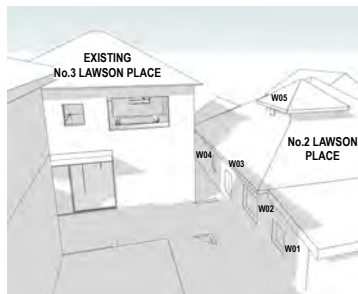
Control: For adjacent buildings with an east-west orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors to living rooms for a period of at least 2 hours from 9am to 3pm on winter solstice (21 June)

Due to the limited available survey information for neighbouring properties, the location of private open space of site No.2 Lawson place has been assumed based on aerial images. The location of living room windows has been assumed based on real estate plans.

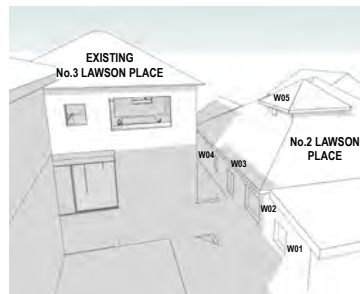
KEY: W01 - window to kitchen (based on real estate plans)
W02 - window to kitchen (based on real estate plans)
W03 - window to bedroom (based on real estate plans)
W04 - window to bathroom (based on real estate plans)
W05 - window to masterbedroom (based on real estate plans)

 EXTENT OF ADDITIONAL OVERSHADOWING CAST BY PROPOSED ADDITION TO NORTH ELEVATION OF NO.2 LAWSON PLACE

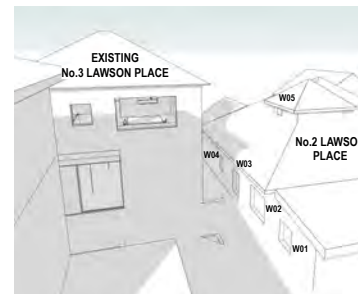
A REV	20423 DATE	DA SUBMISSION DESCRIPTION	NOT FOR CONSTRUCTION		<small>This drawing should be read in conjunction with all relevant contracts, specifications, reports and drawings. Do not scale drawings dimensions govern. Verify all dimensions on site before construction. Copyright of this drawing is vested in Breakspear Architects pty ltd.</small>		ARCHITECT BREAKSPEAR ARCHITECTS <small>ABN 61 601 670 991 ACN 601 670 991 Level 1, 13 The Corso, Manly NSW 2095 P 0421 601 146 E studio@breakspear.com</small>		PROJECT 3 LAWSON PLACE, MANLY		SHEET TITLE SHADOW DIAGRAMS - ELEVATIONS		<small>SHEET NUMBER</small> DA 601	<small>ISSUE</small> A
					<small>PROJECT NUMBER</small> 1302	<small>DRAWN</small> LH	<small>CHECKED</small> TB	<small>SHEET SCALE</small> NTS						
					<small>SHEET SIZE</small> A3									



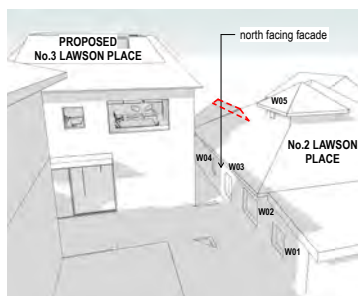
1 EXISTING ELEVATION: JUNE 21 - 1PM
Scale: NTS



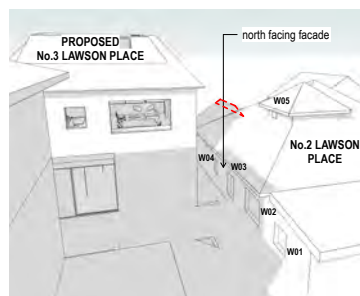
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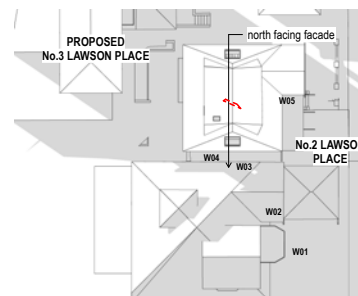
3 EXISTING ELEVATION: JUNE 21 - 3PM
Scale: NTS



4 PROPOSED ELEVATION: JUNE 21 - 1PM
Scale: NTS



5 PROPOSED ELEVATION: JUNE 21 - 2PM
Scale: NTS



6 PROPOSED ELEVATION: JUNE 21 - 3PM
Scale: NTS



SITE PHOTOGRAPH OF NORTH FACING WINDOWS AT 2
LAWSON PLACE

Control: 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 winter solstice (21 June)

Due to the limited available survey information for neighbouring properties, the location of private open space of site No.2 Lawson place has been assumed based on aerial images. The location of living room windows has been assumed based on real estate plans.

KEY: W01 - window to kitchen (based on real estate plans)
W02 - window to kitchen (based on real estate plans)
W03 - window to bedroom (based on real estate plans)
W04 - window to bathroom (based on real estate plans)
W05 - window to master bedroom (based on real estate plans)

**EXTENT OF ADDITIONAL OVERSHADOWING CAST BY
PROPOSED ADDITION TO NORTH ELEVATION OF NO.2
LAWSON PLACE**

A REV	20423 DATE	DA SUBMISSION DESCRIPTION	<div>NOT FOR CONSTRUCTION</div>	<p>This drawing should be read in conjunction with all relevant contracts, specifications, reports and drawings. Do not scale drawings. dimensions govern. Verify all dimensions on site before construction. Copyright of this drawing is vested in Breakspear Architects pty ltd.</p>	<div>ARCHITECT BREAKSPEAR ARCHITECTS ABN 81 601 670 991 ACN 601 670 991 Level 1, 13 The Corso, Manly NSW 2095 P 0421 601 146 E studio@breakspear.com CLIENT Julie and Graeme Blockley 3 Lawson Place Manly NSW, 2095</div>	<div>PROJECT 3 LAWSON PLACE, MANLY</div>	<div>SHEET TITLE SHADOW DIAGRAMS - ELEVATIONS</div>				
					<div>PROJECT NUMBER 1302</div>	<div>DRAWN LH</div>	<div>CHECKED TB</div>	<div>SHEET SCALE NTS</div>	<div>SHEET SIZE A3</div>	<div>SHEET NUMBER DA 602</div>	

balance.
PLANNING

clause 4.6 variation request [height]

adjust the roof form of the
existing dwelling to facilitate the
introduction of an attic

3 Lawson Place, Manly

Client Graeme Blockley
Project No. 2023-0143
Document Type clause 4.6 variation request [height]
Document Author Ryan Gill

Revision	Amendment Description	Date
Final	-	9.06.2023
Rev 1	Updated in response to council RFI (dated 13.10.2023)	18.10.2023
Rev 2	Amended height	13.11.2023

Disclaimer

This report is dated 13 November 2023 and incorporates information and events up to that date only and excludes any information arising, or event occurring, after that date which may affect the validity of Balance Planning's opinion in this report. Balance Planning prepared this report on the instructions, and for the benefit only, of Graeme Blockley (Instructing Party) for the purpose of supporting a development application (Purpose) and not for any other purpose or use.

To the extent permitted by applicable law, Balance Planning expressly disclaims all liability, whether direct or indirect, to the Instructing Party which relies or purports to rely on this report for any purpose other than the Purpose, and to any other person which relies or purports to rely on this report for any purpose whatsoever (including the Purpose).

Whilst Balance Planning has made all reasonable inquiries it believes necessary in preparing this report, it is not responsible for determining the completeness or accuracy of information provided to it. Balance Planning is not liable for any errors or omissions, including in information provided by the Instructing Party or another person or upon which Balance Planning relies, provided that such errors or omissions are not made by Balance Planning recklessly or in bad faith.

This report has been prepared with due care and diligence by Balance Planning and the statements, opinions and recommendations given by Balance Planning in this report are given in good faith and in the reasonable belief that they are correct and not misleading, subject to the limitations above.

INTRODUCTION

This clause 4.6 variation request [height] has been prepared to support an application to adjust the roof form of the existing dwelling to facilitate the introduction of an attic at 3 Lawson Place, Manly.

The proposal

Key aspects of the proposal include altering the roof pitch (maintaining the existing ridge RL) and introducing two dormer-style projections to create a habitable attic space consisting of bedroom and ensuite bathroom.

Land use zone

Manly Local Environmental Plan 2013 (MLEP) applies to the site. The site is within Zone R1 General Residential and the proposed development is permitted with development consent.

An extract of the zoning map is provided at Figure 1.



Figure 1 | Zoning Map extract (Source: NSW Govt.)

The variation

Clause 4.3(2) of MLEP states that the height of a building on any land is not to exceed the maximum height shown for the land on the *Height of Buildings Map*. The *Height of Buildings Map* indicates that the maximum building height permitted at the site is 8.5m.

An extract of the *Height of Buildings Map* is provided at Figure 2.



Figure 2 | Height of
Buildings Map extract
(Source: NSW Govt.)

The maximum height of the proposed building is 9.58m. The maximum extent of variation is 1.08m which equates to a percentage variation of 12.7%. Refer to the section (sheet DA400) supplied at **Attachment A**.

Clause 4.3 is not excluded from the operation of clause 4.6.

Purpose of the document

The purpose of this document is to satisfy the conditions of clause 4.6 of PLEP which requires the submission of a written request from the applicant justifying contravention of the development standard.

This request demonstrates that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard.

ADDRESSING CLAUSE 4.6

This section of the written request addresses the key elements of clause 4.6 in turn.

Compliance is unreasonable or unnecessary [cl 4.6(3)(a)]

Cl. 4.6(3)(a) requires that the written request from the applicant demonstrate that compliance with the standard is unreasonable or unnecessary in the circumstances of the case.

The objectives of the development standard are achieved

Here we seek to demonstrate that compliance with the development standard is unreasonable or unnecessary by invoking one of the “tests” established by the NSW Land and Environment Court in *Four2Five Pty LTD v Ashfield Council* [2015]NSWLEC 90, applying the analysis in *Wehbe v Pittwater Council* [2007]NSWLEC 827, which explains that if the objectives of the development standard are achieved notwithstanding non-compliance with the standard, strict compliance with that standard may be unreasonable or unnecessary.

The objectives of the height of building development standard (clause 4.3) and consideration of each in the context of the proposal is provided at Table 1.

Table 1 | Objectives of the development standard

Objective	Comment
(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,	<p>The planning instruments have not outlined a specific desired streetscape character statement for this location. However, Part 3.1.1 Streetscape (residential areas) of <i>Manly Development Control Plan 2013</i> (MDCP) explains that [emphasis added]:</p> <p>“Streetscape represents the relationship between buildings, landscape, and open spaces in the street scene. Development should recognise predominant streetscape qualities, such as building form, scale, patterns, materials and colours and vegetation which contributes to the character of the local area.”</p> <p>The streetscape character of the street block is considerably diverse in terms of housing typology, building scale, building setbacks, and landscape treatment. In our opinion, it is the <i>absence</i> of a uniform building alignment, the <i>range</i> of building heights, and <i>irregularity</i> of landscaping treatments that define streetscape character in Lawson Place.</p> <p>The proposed roof alterations will not change the spatial relationship between</p>

Objective	Comment
	<p>the external walls of the dwelling and property boundaries, will not increase building site cover or reduced landscaped area, and will not increase the overall height of the dwelling. The alterations proposed are modest and largely concealed when viewed from the street, and the dwelling will continue to make a positive contribution to streetscape.</p> <p>The <i>existing</i> dwelling projects above the 8.5m height plane. The roof alterations involve adjusting the roof pitch and introducing two dormer-style projections on the east and west-facing roof planes. All work occurs <i>below</i> the RL of the existing ridge and therefore will not increase the overall height of the dwelling.</p> <p>Despite the height breach, the proposed development is compatible with prevailing building height in the sense that the works do not increase the overall height of the dwelling, and the scale of the dwelling post-development will remain compatible with streetscape character which, as we have explained, is defined by a diversity of dwelling typologies of dramatically varying scale, and irregular setback pattern.</p> <p>In our opinion, the development aligns with Objective (a).</p>
(b) to control the bulk and scale of buildings,	<p>Clause 4.3(2) anticipates an 8.5m building scale.</p> <p>The existing dwelling projects above the 8.5m height plane. The application proposes roof alterations to allow for the delivery of an attic space. All works occur below the existing ridge RL and do not increase the absolute height of the building.</p> <p>We find that the bulk and scale of the altered roof form is not so dissimilar to that of the existing roof form and is acceptable because:</p> <ul style="list-style-type: none"> The altered roof form will continue to read as a pitched roof and will not substantially increase perceived roof bulk. The eastern dormer projection is offset ~4m from the eastern extent of the existing roof and will present as a recessive element of the building.

Objective	Comment
	<ul style="list-style-type: none"> The works occur below the RL of the existing ridge and will not increase the overall scale of the building, meaning the absolute scale of the building is unchanged. The locality is characterised by a diverse range of housing typologies including residential flat buildings consisting of several storeys. The scale of the dwelling is modest by comparison, and is compatible with established built form character. <p>Despite non-compliance, the bulk and scale of the proposed development is not excessive and is compatible with the scale of development in the street-block. In our opinion, the perceived bulk and scale of the building aligns with Objective (b).</p>
<p>(c) (c) to minimise disruption to the following—</p> <p>(i) views to nearby residential development from public spaces (including the harbour and foreshores),</p> <p>(ii) views from nearby residential development to public spaces (including the harbour and foreshores),</p> <p>(iii) views between public spaces (including the harbour and foreshores),</p>	<p>The application proposes roof alterations including adjusting the roof pitch and introducing a dormer-style projection on the east and west-facing roof planes to allow for the delivery of an attic space. All works occur below the existing ridge RL and do not increase the absolute height of the building.</p> <p><u>Public views</u></p> <p>The site is some ~550m from Manly Beach and the dwelling will not be readily discernible from the beach or any other nearby public place. The works will not disrupt views to nearby residential development from public spaces, or views between public spaces.</p> <p><u>Private views</u></p> <p>The dwelling to the west at 38 Birkley Road incorporates an east-facing upper-level bedroom with deck. This bedroom and deck have an eastern outlook over the detached garage and secondary dwelling situated on the Lawson Place frontage of that property.</p> <p>Approved plans for 38 Birkley Road indicate that the FFL of the bedroom is at RL 52.25. The ridge of the subject dwelling is at RL 56.11, almost 4m above the FFL of the neighbour's bedroom. It is therefore improbable that 38 Birkley Road has a sightline through the subject property to</p>

Objective	Comment
	any high value views beyond. It follows that the proposed alterations are unlikely to have an adverse impact on views from nearby residential development to public spaces. Despite height breach, the proposal satisfies Objective (c).
(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,	Shadow diagrams have been prepared in plan and as 3D models to demonstrate shadow cast by the proposed development between 9am and 3pm on the winter solstice. The 3D diagrams distinguish between existing shadow and new shadow cast by the development. The diagrams are supplied at Attachment B . The diagrams in plan supplied indicate that the roof alterations will have <i>no</i> shadow impact on the main private open space area of the property to the south at 2 Lawson Place which is situated on the western side of that dwelling. The 3D shadow diagrams supplied demonstrate that the roof alterations will have <i>no</i> shadow impact on windows or gazed doors to living rooms associated with the property to the south at 2 Lawson Place. An upper-level window will be impacted at 10am however relates to a bedroom, not a living room. Additionally, shadow diagrams demonstrate that the roof alterations will have no shadow impact on public spaces (other than the road pavement). The proposal performs well against the applicable solar access controls and consequently satisfies Objective (d), despite building height breach.
(e) to ensure the height and bulk of any proposed building or structure in a recreation or conservation zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.	The site is within Zone R1. Objective (e) is not applicable.

The objectives of clause 4.3 are achieved notwithstanding non-compliance as outlined above. Strict compliance with clause 4.3 is unreasonable and unnecessary in the circumstances of the case. This discussion responds to cl.4.6(3)(a).

Sufficient environmental planning grounds [cl.4.6(3)(b)]

Cl. 4.6(3)(b) requires that the written request from the applicant demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard.

Here we explain that there are sufficient environmental planning grounds to justify contravening the development standard. The environmental planning grounds described below are specific to the site and to the development:

- The extent of variation is numerically minor at 1.08m which equates to a percentage variation of 12.7%. The non-compliance is limited to the upper-most portion of the proposed roof form. Although the minor extent of variation is not in and of itself adequate justification, it is certainly relevant to council's consideration of the variation request.
- The existing dwelling breaches building height and the proposed roof alterations will not increase the absolute height of the dwelling (i.e. the works occur below the existing ridge RL). Under the heading "exceptions to height" at Part 4.1.2 of MDCP, it states that where an existing building exceeds the height of building standard, any alterations and/or additions to the building must not increase the overall height of the building. This control infers that the policy position of the consent authority is to allow for tolerance where an existing building breaches height and works do not increase *overall* height. This variation "condition" applies in this case.
- The eastern face of the proposed dormer is ~4m from the eastern-most edge of the roof form. Consequently, the altered roof form will not be discernible from Lawson Place at the property frontage. The image at Figure 3 demonstrates that the existing roof form is entirely concealed when viewed from street level. Similarly, we anticipate that the altered roof form will have limited visibility as one moves along Lawson Place from the south owing to local terrain (the southern section of Lawson Place being downslope of the site).



Figure 3 | View from Lawson Place
(Source: Balance Planning)

- The immediate context is characterised by a broad variety of housing typologies ranging from detached dwellings to residential flat buildings. Building scale is equally varied. Detached dwellings have a single to two storey scale, several nearby brick “walk-ups” comprise two to three storeys, and scattered late century flat buildings consist of several storeys or more. The image at Figure 4 shows the subject dwelling (roof visible) in the middle-ground and nearby multi-storey residential flat buildings in the near background. In our opinion, a minor height breach is unlikely to have any consequence in terms of streetscape character where the locality consists of such a diverse and irregular pattern of development involving numerous buildings projecting above the 8.5m height plane.



Figure 4 | Built form context
(Source: Balance Planning)

- The height non-compliant element of the building does not have an adverse impact on neighbour amenity:
 - The dwelling to the west at 38 Birkley Road incorporates an east-facing upper-level bedroom and associated deck. This bedroom and deck have an eastern outlook which will not be obscured by the proposed roof alterations. There are no high-value public or private **views** obtained through the site that will be compromised by the roof alterations. The development, despite height breach, will have no adverse view impact.
 - The roof alterations and proposed skylights / window openings are designed to mitigate the potential for cross-viewing and overlooking. The proposed skylights / windows do provide direct line of sight into neighbouring habitable room windows or private open space areas. Resident **privacy** will be preserved notwithstanding height breach.
 - Shadow diagrams supplied at **Attachment B** indicate that the proposed dwelling will cast **shadow** toward the property at 2 Lawson Place. However, shadow will largely fall over roof surfaces and will have *no* impact on the ground level private open space area or living room windows.

We have explained that there are sufficient environmental planning grounds to justify the proposed contravention of clause 4.3. The environmental planning grounds outlined are not general propositions but rather are specific to the site and the proposed development.

The development is in the public interest [cl.4.6(4)(a)]

Cl. 4.6(4)(a) requires that the consent authority be satisfied the applicant's request has adequately addressed the matters set out at subclause (3), and that the development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the applicable land use zone.

We have adequately addressed the matters set out at subclause (3) in the previous sections of this report. We submit that the proposed development aligns with the public interest because it is consistent with the objectives for the building height standard (outlined in Table 1 above) and the objectives for Zone R1 as outlined in Table 2 below.

Table 2 | Objectives of the zone

Objective	Comment
• To provide for the housing needs of the community.	The application proposes alterations and additions to an existing dwelling. The works will enhance housing stock in Manly and is consistent with the objective to provide for the housing needs of the community.
• To provide for a variety of housing types and densities.	The application relates to an existing detached dwelling which is permissible in Zone R1 and is a suitable residential typology for the property. The proposed development is consistent with the objective to provide a range of housing types and densities.
• To enable other land uses that provide facilities or services to meet the day to day needs of residents.	The proposal is for a dwelling. This zone objective is not relevant to the proposal.

The proposed development aligns with the objectives for development in Zone R1 for the reasons outlined above, despite building height breach, and is in the public interest.

SUMMARY

This clause 4.6 variation request [height] has been prepared to support an application to adjust the roof form of the existing dwelling to facilitate the introduction of an attic at 3 Lawson Place, Manly.

This written request seeks to vary clause 4.3 of MLEP. The proposed development has a maximum height of 9.58m. The development will exceed permitted building height by 1.08m which equates to a percentage variation of 12.7%.

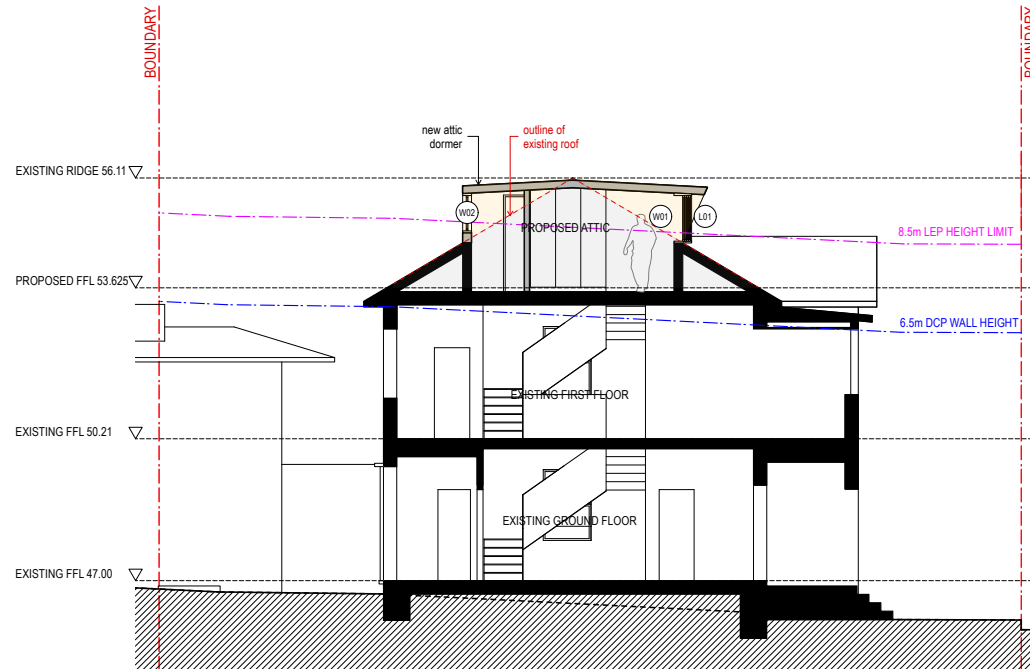
We have demonstrated that strict compliance with the development standard is unnecessary and unreasonable in the circumstances of the case given the development achieves the objectives of the standard notwithstanding non-compliance.

Further, we have explained that there are sufficient environmental planning grounds to justify contravening the development standard, namely that the existing dwelling breaches height and the roof alterations will not extend above existing ridge RL, and that the altered roof will have limited streetscape presence. We have established that the building will have no adverse impact on neighbour amenity.

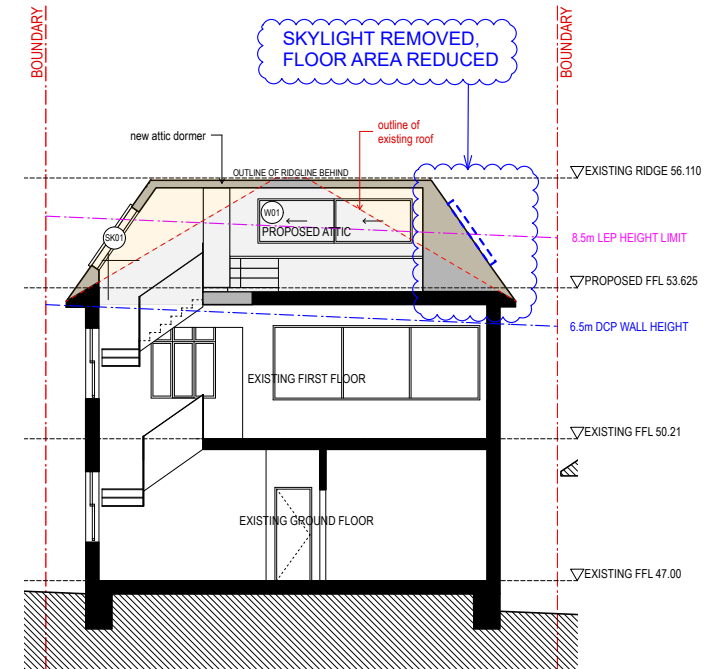
Finally, this written request demonstrates that the development is in the public interest as it is consistent with the objectives of the standard and the objectives of Zone R1.



ATTACHMENT A | SECTIONS



1 PROPOSED LONG SECTION
Scale: 1:100



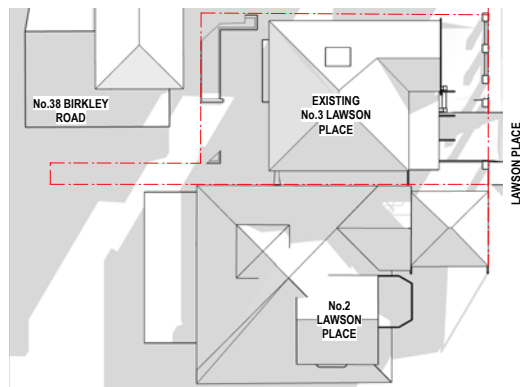
2 PROPOSED CROSS SECTION
Scale: 1:100

B A REV	18/10/23	DA AMENDMENT	<div>NOT FOR CONSTRUCTION</div>	<div>1:100</div> <div>0125</div> <div>This drawing should be read in conjunction with all relevant contracts, specifications, reports and drawings. Do not scale drawings dimensions govern. Verify all dimensions on site before construction. Copyright of this drawing is vested in Breakspear Architects pty ltd.</div>	<div>ARCHITECT</div> <div>BREAKSPEAR ARCHITECTS</div> <div>ABN 81 601 670 981 ACN 601 670 981</div> <div>Level 1, 13 The Corso, Manly NSW 2095</div> <div>P: 0421 681 146 E: studio@breakspear.com</div> <div>CLIENT</div> <div>Julie and Graeme Blockley</div> <div>3 Lawson Place</div> <div>Manly NSW, 2095</div>	<div>PROJECT</div> <div>3 LAWSON PLACE, MANLY</div>	<div>SHEET TITLE</div> <div>PROPOSED SECTIONS</div>					
	20/4/23	DA SUBMISSION				<div>PROJECT NUMBER</div> <div>1302</div>	<div>DRAWN</div> <div>LH</div>	<div>CHECKED</div> <div>TB</div>	<div>SHEET SCALE</div> <div>1:100</div>	<div>SHEET SIZE</div> <div>A3</div>	<div>SHEET NUMBER</div> <div>DA 400</div>	<div>ISSUE</div> <div>B</div>

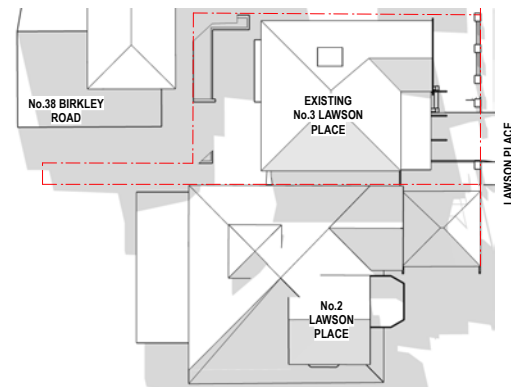
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 — EXISTING WALL
 - - - DEMOLISHED WALL
 — LANDSCAPE WORKS
 — ADDITIONS TO EXISTING
 — ALTERATIONS TO EXISTING



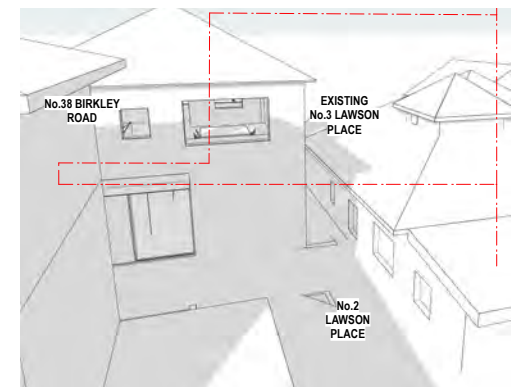
ATTACHMENT B | SHADOW DIAGRAMS



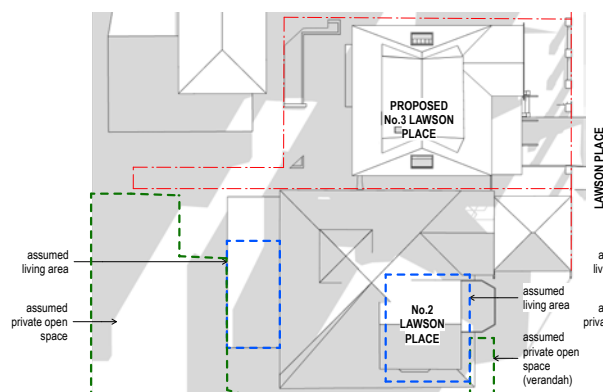
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Scale: 1:300



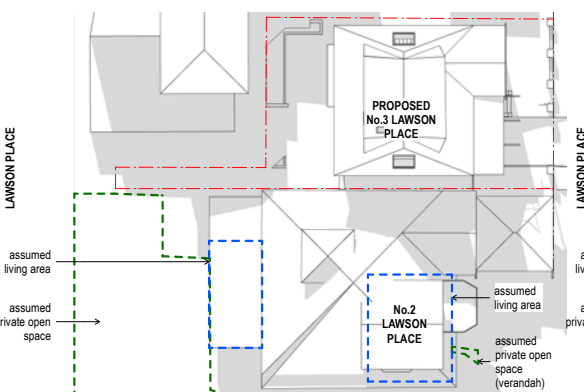
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Scale: 1:300



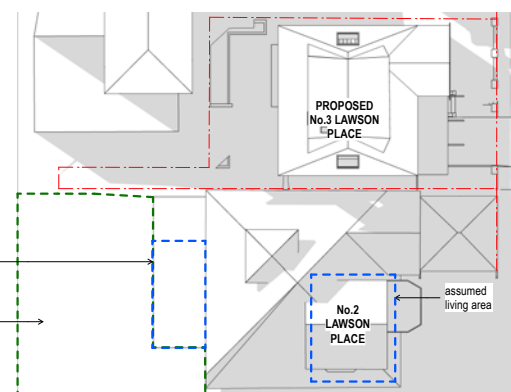
3 EXISTING PLAN: JUNE 21 - 3PM
Scale: 1:300



4 PROPOSED PLAN: JUNE 21 - 9AM
Scale: 1:300



5 PROPOSED PLAN: JUNE 21 - 12PM
Scale: 1:300



6 PROPOSED PLAN: JUNE 21 - 3PM
Scale: 1:300

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

Due to the limited available survey information for neighbouring properties, the location of private open space of site No.2 Lawson place has been assumed based on aerial images. The location of living room windows has been assumed based on real estate plans.

--- ASSUMED NEIGHBOURING PRIVATE OPEN SPACE OF NO.2 LAWSON PLACE WITH SOLAR ACCESS
--- ASSUMED LIVING AREA BASED ON REAL ESTATE PLANS

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DA SUBMISSION
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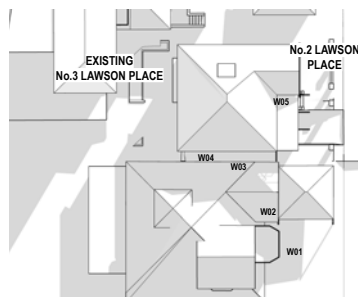
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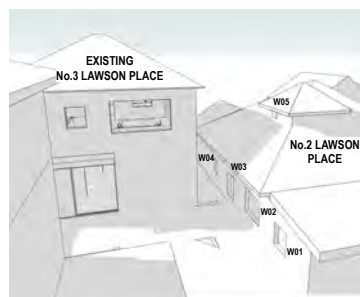
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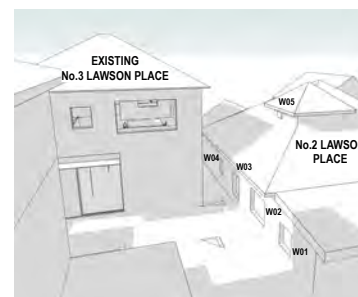
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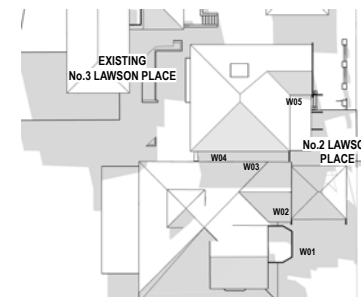
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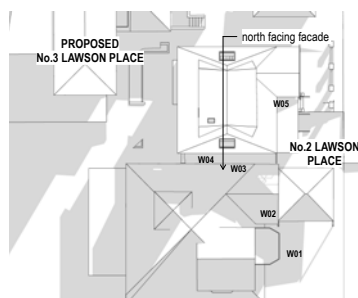
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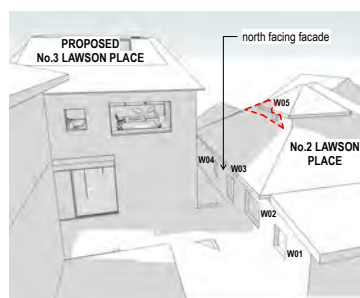
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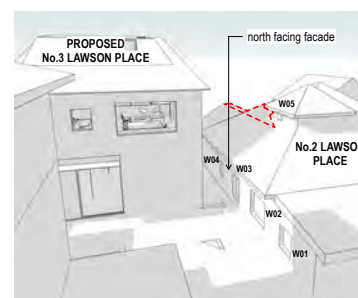
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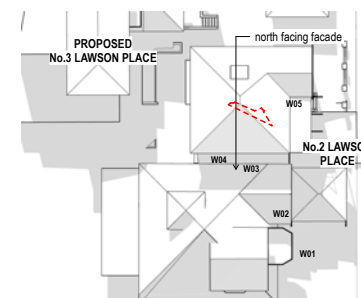
5 PROPOSED ELEVATION: JUNE 21 - 9AM
Scale: NTS



6 PROPOSED ELEVATION: JUNE 21 - 10AM
Scale: NTS



7 PROPOSED ELEVATION: JUNE 21 - 11AM
Scale: NTS




8 PROPOSED ELEVATION: JUNE 21 - 12PM
Scale: NTS

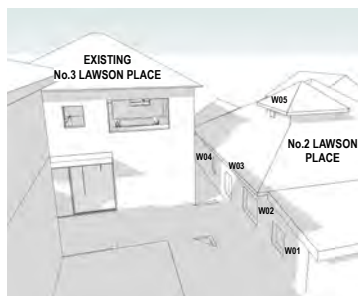
Control: For adjacent buildings with an east-west orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors to living rooms for a period of at least 2 hours from 9am to 3pm on winter solstice (21 June)

Due to the limited available survey information for neighbouring properties, the location of private open space of site No.2 Lawson place has been assumed based on aerial images. The location of living room windows has been assumed based on real estate plans.

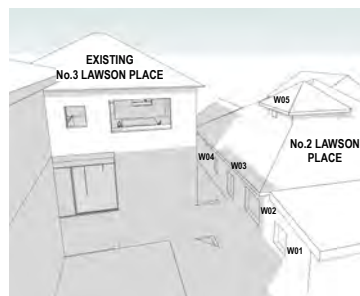
KEY: W01 - window to kitchen (based on real estate plans)
W02 - window to kitchen (based on real estate plans)
W03 - window to bedroom (based on real estate plans)
W04 - window to bathroom (based on real estate plans)
W05 - window to masterbedroom (based on real estate plans)

 EXTENT OF ADDITIONAL OVERSHADOWING CAST BY PROPOSED ADDITION TO NORTH ELEVATION OF NO.2 LAWSON PLACE

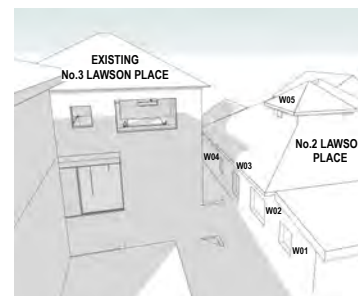
A REV	20423 DATE	DA SUBMISSION DESCRIPTION	NOT FOR CONSTRUCTION		<small>This drawing should be read in conjunction with all relevant contracts, specifications, reports and drawings. Do not scale drawings dimensions govern. Verify all dimensions on site before construction. Copyright of this drawing is vested in Breakspear Architects pty ltd.</small>		ARCHITECT BREAKSPEAR ARCHITECTS <small>ABN 61 601 670 991 ACN 601 670 991 Level 1, 13 The Corso, Manly NSW 2095 P 0421 601 146 E studio@breakspear.com</small> CLIENT <small>Julie and Graeme Blockley 3 Lawson Place Manly NSW, 2095</small>		PROJECT 3 LAWSON PLACE, MANLY SHEET TITLE SHADOW DIAGRAMS - ELEVATIONS		SHEET NUMBER DA 601 ISSUE A
					PROJECT NUMBER	DRAWN	CHECKED	SHEET SCALE	SHEET SIZE		
					1302	LH	TB	NTS	A3		



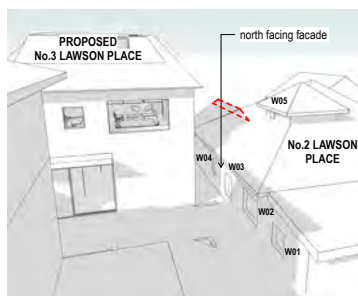
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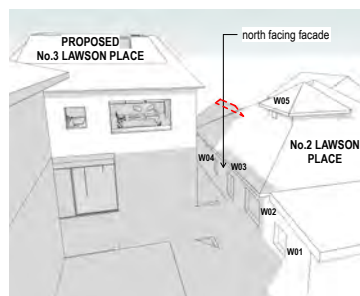
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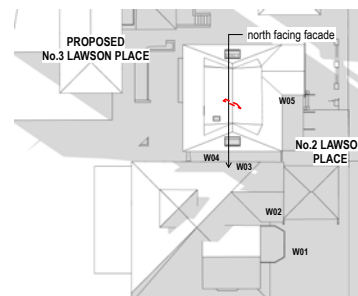
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4 PROPOSED ELEVATION: JUNE 21 - 1PM
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5 PROPOSED ELEVATION: JUNE 21 - 2PM
Scale: NTS



6 PROPOSED ELEVATION: JUNE 21 - 3PM
Scale: NTS




SITE PHOTOGRAPH OF NORTH FACING WINDOWS AT 2
LAWSON PLACE

Control: 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 winter solstice (21 June)

Due to the limited available survey information for neighbouring properties, the location of private open space of site No.2 Lawson place has been assumed based on aerial images. The location of living room windows has been assumed based on real estate plans.

KEY: W01 - window to kitchen (based on real estate plans)
W02 - window to kitchen (based on real estate plans)
W03 - window to bedroom (based on real estate plans)
W04 - window to bathroom (based on real estate plans)
W05 - window to master bedroom (based on real estate plans)

 EXTENT OF ADDITIONAL OVERSHADOWING CAST BY
PROPOSED ADDITION TO NORTH ELEVATION OF NO.2
LAWSON PLACE

A REV	20423 DATE	DA SUBMISSION DESCRIPTION	NOT FOR CONSTRUCTION		ARCHITECT BREAKSPEAR ARCHITECTS ABN 81 601 670 991 ACN 601 670 991 Level 1, 13 The Corso, Manly NSW 2095 P 0421 601 146 E studio@breakspear.com CLIENT Julie and Graeme Blockley 3 Lawson Place Manly NSW, 2095	PROJECT 3 LAWSON PLACE, MANLY					SHEET TITLE SHADOW DIAGRAMS - ELEVATIONS	
						PROJECT NUMBER 1302	DRAWN LH	CHECKED TB	SHEET SCALE NTS	SHEET SIZE A3	SHEET NUMBER DA 602	

ITEM 3.5 **DA2023/1167 - 23 OLIVER STREET FRESHWATER - EXTENSION
TO THE HOURS OF OPERATION FOR AN EXISTING
RECREATIONAL (INDOOR) FACILITY**

REPORTING MANAGER Adam Richardson

TRIM FILE REF 2023/748916

ATTACHMENTS 1 [Download](#) Assessment Report

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to DA2023/1167 for extension to the hours of operation for an existing recreational (indoor) facility on land at Lot 1 DP 517620, 23 Oliver Street FRESHWATER, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/1167
----------------------------	-------------

Responsible Officer:	Brittany Harrison
Land to be developed (Address):	Lot 1 DP 517620, 23 Oliver Street FRESHWATER NSW 2096
Proposed Development:	Extension to the hours of operation for an existing recreational (indoor) facility
Zoning:	Warringah LEP2011 - Land zoned E1 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Lyndoc Freshwater Pty Ltd
Applicant:	Patch Planners Pty Ltd

Application Lodged:	12/09/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Other
Notified:	18/09/2023 to 02/10/2023
Advertised:	Not Advertised
Submissions Received:	5
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 0.00
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EXECUTIVE SUMMARY

This development application seeks consent for the extension to the hours of operation associated with an existing recreational (indoor) facility, known as the BFT Gym. Specifically, the application proposes to extend the hours of operation by one (1) hour in the morning for weekdays and Saturdays, with operations starting at 5am.

The application is referred to the Development Determination Panel (DDP) due to the proposal receiving five (5) submissions.

The development application was notified for a period of fourteen (14) days, with the concerns raised



in the submissions relating to the potential resultant acoustic impacts upon surrounding residential land. The applicant was advised of these concerns and provided an amended Acoustic Impact Report after further noise impact investigations. Refer to 'Site History' for further detail.

The application and amended Acoustic Impact Report (dated 29 September 2023) was reviewed and supported by Council's Environmental Health Team, subject to relevant conditions.

In conjunction with the close proximity to residential development, history of noise complaints and the nature of the concerns raised in the submissions, it is considered acceptable that the proposal be supported subject to a recommended condition to allow a six (6) month trial period of the proposed extended hours of operation. This will allow for the overall amenity performance of the gymnasium's extended hours to be evaluated before the sought hours are permanent.

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

PROPOSED DEVELOPMENT IN DETAIL

This development application seeks consent for the extension to the hours of operation for an existing recreational (indoor) facility.

The proposal seeks to extend the weekday and Saturday morning hours by one (1) hour in the morning, with no other changes. This would result in the operating hours of the business beginning at 5:00am with the first gym class starting at 5:15am.

The proposed operational hours are as follows:

- Monday to Saturday: 5.00am to 10.00pm; and
- Sundays or Public Holidays: 6.00am to 10.00pm.

ASSESSMENT INTRODUCTION

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

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

proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan - D3 Noise

SITE DESCRIPTION

Property Description:	Lot 1 DP 517620 , 23 Oliver Street FRESHWATER NSW 2096
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the eastern side of Oliver Street.</p> <p>The subject site is legally identified as Lot 1 in Deposited Plan 517620, 23 Oliver Street, Freshwater.</p> <p>The site is regular in shape with a surveyed area of 854.0m². The site can be accessed form Oliver Street to the west or existing laneway to the south. Public parking is available nearby.</p> <p>The site is located within the E1 Local Centre zone and accommodates an existing indoor recreational facility (gymnasium).</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by residential development to the north and west, with a childcare centre (heritage item) to the south.</p>

Map:





SITE HISTORY

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

CDC2015/0338

Complying Development Certificate for Internal alterations to an existing community facility.
Determined on 10 July 2015.

CDC2022/0572

Complying Development Certificate for Change of use from community facility to indoor recreation facility.
Determined on 16 June 2022.

CDC2022/1156

Complying Development Certificate for Change of use from community facility to indoor recreation facility including internal alterations.
Determined on 4 November 2022.

DA2022/1912

Development Application for alterations and additions to an existing building including signage.
Determined on 14 December 2022.

Hours of Operation History

The Complying Development Certificate (CDC2022/1156) for the change of use from community facility to indoor recreation facility including internal alterations included the following condition in relation to operational hours:

Schedule 8 - Part 4 Operational requirements:-

- (1) If there are existing conditions on a development consent applying to hours of operation, the development must not be operated outside the hours specified in those conditions.*
- (2) If there are no existing conditions on a development consent applying to hours of operation, the development must not be operated outside the following hours:*
 - (a) if the development involves a new use as bulky goods premises or other commercial premises—7.00 am to 10.00 pm Monday to Saturday and 7.00 am to 8.00 pm on a Sunday or a public holiday,*
 - (b) if the development involves a new use as something other than a bulky goods premises or other commercial premises and adjoins or is opposite a residential lot within a residential zone or Zone RU5 Village—7.00 am to 7.00 pm Monday to Saturday and no operation on a Sunday or a public holiday,*
 - (c) in any other case not referred to in paragraph (a) or (b)—7.00 am to 7.00 pm Monday to Saturday and 9.00 am to 6.00 pm on a Sunday or a public holiday.*

Despite the above, the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* under *Subdivision 23B Hours of operation* and trading allows for the trading on or from a premise in accordance with an existing development consent or complying development certificate at the following times occurring outside the hours permitted by the development consent or complying development certificate; in an E1 Zone a premise can operate between 6.00am - 10.00pm.

Therefore, the existing gymnasium is able to operate between 6:00am - 10:00pm Monday - Sunday, as specified under the provisions of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

Note: Council is in receipt of a number of noise issues relating to the operation of the gymnasium since December 2022, in particular noise relating to music and the use of equipment.

Current Application History

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

Council advised the applicant of the issues revealed during the assessment process on 21 September 2023, which included the following:

- The submitted Acoustic Report (original) does not include control measures that would result in minimal impact to reduce the noise disturbance on surrounding residents.

Additional information which included an amended Acoustic Report (dated 29 September 2023) consisting of further investigation (noise monitoring) and recommendations was received on 27 October 2023. This information was reviewed by Council's Environmental Health Officer. The report was deemed to be acceptable, subject to conditions. The proposal did not require re-notification as the amendments reduced overall environmental impact.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a recommended condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this</p>

Section 4.15 Matters for Consideration	Comments
	<p>application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to Potential Acoustic Impacts. This request was made by the Environmental Health Team, with an amended acoustic report provided.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a recommended condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 2011 section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

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 18/09/2023 to 02/10/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Withheld Withheld	FRESHWATER NSW 2096
Withheld	FRESHWATER NSW 2096
Ms Catherine Jane Brockbank	6 / 25 Oliver Street FRESHWATER NSW 2096
Lesley Ann Watson	15 / 25 Oliver Street FRESHWATER NSW 2096
Withheld	MANLY NSW 2095

The proposal resulted in five (5) objections. The issues raised are discussed below:

- ***Acoustic impacts as a result of the proposed extended hours from 6am to 5am, these include amplified music and gym equipment noises. The gym is located in a residential area.***
- ***Historical complaints regarding the gym opening at 5am without approval.***
- ***Concerns regarding the accuracy/information provided in the submitted Acoustic Report.***

Comment

Concerns are raised within the submissions in relation to the acoustic amenity impacts that will occur as a result of the proposed extended hours (5.00am -10.00pm), as the existing gym is located in close proximity to a an established residential area. It is noted that the application is confined to an additional hours trading. The proposal has been accompanied by an Acoustic Report (Gym Noise Impact Assessment) prepared by Acoustic Logic (dated 16 August 2023). An amended Acoustic Report was later submitted (dated 29 September 2023) which included further investigation (noise monitoring), which has been reviewed by Council's Environmental Health Officer. Recommendations as stated within the amended Acoustic Report have been included as recommended conditions, which have been supplemented with conditions provided by Council's Environmental Health Officer. A six (6) month trial period is recommended for the proposed extension of hours, so as to evaluate the suitability of them. Refer to 'Clause D3 Noise' for further detail.

The concerns in relation to the gymnasium operating outside of existing approved hours are separate to this application.

The submitted Acoustic Report has been prepared by a suitably acoustic consultant and reviewed by Council's Environmental Health Officer, which considers that the extended trading hours to be of acceptable impact. Despite this, a condition is recommended for an acoustic review of the findings and recommendations prepared by Acoustic Logic to be carried out on site.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><i>Supported, no conditions required.</i></p> <p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p>
Environmental Health (Industrial)	<p><i>Supported, subject to conditions.</i></p> <p><u>General Comments</u> This application is seeking consent for a change of operational hours to an existing gym located at 23 Oliver Street, Freshwater. The gym is proposing to extend the weekday and Saturday morning hours by 1 hour in the morning with no other changes. This would result in the operating hours of the business beginning at 5:00am with the first gym class starting at 5:15am.</p> <p>The updated acoustic report prepared by Acoustic Logic dated 29 September 2023 has been submitted with the development application.</p> <p>Noise control measures have been provided and Council will apply such controls through the consent conditions with amendments.</p> <p>Extended exposure to noise levels above 55-60 dB can be considered disturbing or become annoying therefore Council considers a maximum noise level of 72dB to be unreasonable and Council will be reducing the noise limiter level to a maximum of 65dB.</p>
Property Management and Commercial	<p><i>Supported, no conditions required.</i></p> <p>The proposal is to extend the existing hours of operation on Mon- Sat from a 6am start to a 5am start.</p> <p>Property has no comment to make regarding the proposal.</p>
Strategic and Place Planning (Heritage Officer)	<p>HERITAGE COMMENTS</p> <p>Discussion of reason for referral</p>

Internal Referral Body	Comments												
	<p>Supported, subject to conditions.</p> <p>The proposal has been referred to Heritage as the subject site is within the vicinity of heritage items</p> <p>I71 - Building known as 'Harbord Literary Institute' - Cnr Lawrence St and Oliver St</p> <p>I72 - Building known as 'Early Childhood Health Centre' - 29 Lawrence St</p>												
	<p>Details of heritage items affected</p> <p>Harbord Literary Institute <u>Statement of Significance</u> "Harbord Literary Institute" has great social & historical significance for the community, having been part of community life since early 1900's. Historically the buildings indicate the growing need for facilities for the increasing permanent community. <u>Physical Description</u> Essentially two buildings with original building at rear which is a single storey brick building with 2 stringcourses of darker brick in line with top & bottom of windows. Gabled corrugated iron roof. Brick flat roofed addition on eastern side. Building on corner-single storey brick with hipped tiled roof. Brick gable located over entrance with arched opening & semi-circular plain leadlight. Timber weatherboards under eaves. Flag poles.</p> <p>Early Childhood Health Centre <u>Statement of Significance</u> A representative example of inter-war fire station architecture displaying high integrity of fabric. Strong social significance as the 1st permanent fire station building in Freshwater & in its continual use for the provision of community services. <u>Physical Description</u> Single storey brick building with multi-gabled roof and detailed parapet on front facade. Roof of slate with terracotta capping & finials. Timber louvres to small gable ends. Facade partly rendered. Changes to entrance when changed to baby health centre. Canopy over entrance door. Brick course around door. Public toilets have been added to rear of building. Tree still exists to east of building adjacent to public pathway. Timber flag pole on top.</p>												
	<p>Other relevant heritage listings</p> <table><tr><td>SEPP (Biodiversity and Conservation) 2021</td><td>No</td><td></td></tr><tr><td>Australian Heritage Register</td><td>No</td><td></td></tr><tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr><tr><td>National Trust of Aust (NSW) Register</td><td>No</td><td></td></tr></table>	SEPP (Biodiversity and Conservation) 2021	No		Australian Heritage Register	No		NSW State Heritage Register	No		National Trust of Aust (NSW) Register	No	
SEPP (Biodiversity and Conservation) 2021	No												
Australian Heritage Register	No												
NSW State Heritage Register	No												
National Trust of Aust (NSW) Register	No												

Internal Referral Body	Comments		
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	
	Consideration of Application		
	<p>The proposal seeks consent to extend trading hours from 6am - 10pm to 5am to 10pm on Monday-Saturday. No physical works are proposed as part of the proposal. The proposal was referred to Heritage as the subject site is within the vicinity of two items. However as there is no physical works proposed, there is no impact to either item.</p> <p>Therefore Heritage raises no objections and requires no conditions.</p> <p>Consider against the provisions of CL5.10 of WLEP.</p> <p>Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No</p>		

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 (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

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?	
zone objectives of the LEP?	Yes

Principal Development Standards

No external works proposed under this application. Therefore, the external built form and building footprint is to remain as existing.

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	N/A
5.10 Heritage conservation	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

No external works proposed under this application. Therefore, the external built form and building footprint is to remain as existing.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
D3 Noise	Yes	Yes
D8 Privacy	Yes	Yes
D20 Safety and Security	Yes	Yes
G5 Freshwater Village	Yes	Yes

Detailed Assessment

D3 Noise

Merit Consideration

The proposal seeks development consent for the change in operational hours to an existing recreational facility (indoor). The proposed hours are as noted below, with the application effectively seeking an additional hour of trade Monday to Saturday, commencing at 5am:

- Monday to Saturday: 5.00am to 10.00pm; and
- Sundays or Public Holidays: 6.00am to 10.00pm.

The application was initially accompanied by an Acoustic Report (Gym Noise Impact Assessment) prepared by Acoustic Logic (dated 16 August 2023). An amended Acoustic Report was later submitted (dated 29 September 2023) which included further investigation (noise monitoring), which has been reviewed by Council's Environmental Health Officer. The Acoustic Report has been prepared in accordance with 'Noise Policy for Industry' (2017). The amended Acoustic Report includes noise mitigation measures by way of recommendations in order to avoid unacceptable noise related impacts upon adjoining and surrounding properties. The recommendations listed have been included as conditions of consent, and have been amended where relevant by Council's Environmental Health Officer. The recommended conditions are as follows:

- *A noise limiter is to be installed to measure the sound pressure level of the music/microphone noise. The noise limiter is to be set to a maximum sound pressure level of 65dB inside the gymnasium. The limiter is to be stored in a secured, locked area only accessible by a manager for the gymnasium but must not be adjusted higher than 65dB at any time.*
- *All doors and operable windows are to be kept closed for the duration of every class. All entry doors are to be fitted with a self-closing mechanism to ensure that the doors are not kept open. Mechanical plant is to be in operation no earlier than 5:00am each day of business operation.*
- *All entry doors are to be fitted with a self-closing mechanism to ensure that the doors are not kept open. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.*

Since commencement of the gym, there have been noise complaints received in relation to the gym's operation particularly in relation to early morning use. A condition will therefore be included for a six (6) month trial period to include the extended hours (to open at 5:00am rather than 6:00am - Monday to Saturday) which will begin from the date of first operation with the new hours in place (with the commencement date to be provided). Following the expiry of the six (6) month trial period, the gymnasium must revert back to the original approved operational hours, unless separate approval for the permanent extension in trading hours has been obtained by Council, which could only be contemplated with the successful operation of the trial period, demonstrated through verifiable information.

Supplementing this will be the requirements for an acoustic review of the findings and recommendations of Acoustic Logic (dated 29 September 2023) being carried out and any necessary remedial action to obtain acoustic compliance being implemented, being undertaken within the first thirty (30) days of the trial. These conditions are to ensure that amenity of the surrounding locality is maintained, due to the close proximity of sensitive residential receivers and that the acceptable acoustic environment is achieved.

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

- ***To encourage innovative design solutions to improve the urban environment.***
- ***To ensure that noise emission does not unreasonably diminish the amenity of the area or result in noise intrusion which would be unreasonable for occupants, users or visitors.***

Comment

As discussed above, the proposal has been accompanied by an Acoustic Report prepared by a suitably qualified person. The recommendations made in the report have been reviewed and included (subject to amendments) by Council's Environmental Health Officer as conditions of consent. In addition, given the close proximity to residential areas and the history of noise complaints in relation to the existing gym's current operation hours, conditions have been included for an acoustic review and trial period of six (6) months of the proposed operational hours. These recommended conditions are considered to be innovative solutions to improve the urban environment and will ensure that noise emission do not unreasonably diminish the amenity of the area.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this application.

CONCLUSION

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

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

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

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

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

PLANNING CONCLUSION

This proposal, for the extension to the hours of operation to an existing recreational (indoor) facility has been referred to the Development Determination Panel (DDP) due to receiving five (5) individual submissions.

The concerns raised in the submissions relate to the potential acoustic impacts upon surrounding residential land. In response to these concerns the applicant provided an amended Acoustic Impact Report after further noise impact investigations including additional recommendations.

The application and amended Acoustic Impact Report (dated 29 September 2023) was reviewed and supported by Council's Environmental Health Team, subject to relevant conditions. In addition, conditions have also been recommended for the extended hours to undergo a six (6) month trial period, to allow for the change in hours to be acceptably evaluated.

This report concludes with a recommendation that the DDP grant approval to the development 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 Council as the consent authority grant Development Consent to DA2023/1167 for Extension to the hours of operation for an existing recreational (indoor) facility on land at Lot 1 DP 517620, 23 Oliver Street, FRESHWATER, 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 Reports and Documentation	
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Document Title	Version Number	Prepared By	Date of Document
Gym Noise Impact Assessment	Revision 4	Acoustic Logic Pty Ltd.	29 September 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. 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.

3. 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.

4. **Noise Management**

All doors and operable windows are to be kept closed for the duration of every class. All entry doors are to be fitted with a self-closing mechanism to ensure that the doors are not kept open.

Mechanical plant is to be in operation no earlier than 5:00am each day of business operation.

Reason: To protect the amenity of the area.

5. **Noise Limiter**

A noise limiter is to be installed to measure the sound pressure level of the music/microphone noise. The noise limiter is to be set to a maximum sound pressure level of 65dB inside the gymnasium. The limiter is to be stored in a secured, locked area only accessible by a manager for the gymnasium but must not be adjusted higher than 65dB at any time.

Reason: To ensure acoustic compliance in an operational situation

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

6. **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.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

7. **Noise Management**

All entry doors are to be fitted with a self-closing mechanism to ensure that the doors are not kept open.

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

Reason: To ensure noise is managed effectively

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

8. **6 Month Trial Period for Hours of Operation**

The gymnasium (indoor recreational facility) may be open for business **Monday to Saturday from 5.00am** for a trial period of six (6) months from the date these operational hours are put into place (Council is to be informed of this commencement date in writing). Following the expiry of this period, the hours of operation specified in CDC2022/1912 shall apply.

Notwithstanding this, the hours of operation of the premises that are otherwise permitted under the exempt development provisions of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 continue to apply.

In order for the above trial hours of operation to be confirmed as on-going, a Section 4.55 Modification Application must be lodged with Council prior to the expiration of the trial period.

The assessment of the application to continue the proposed hours of operation for the gymnasium will consider, inter alia, the impact of the use on surrounding areas and the performance of the operation in relation to compliance with development consent conditions.

Note: Any person acting on this consent is advised that any modification application concerned with the trial hours of operation should be submitted to Council within sixty (60) days minimum prior to the expiration of the trial period otherwise the trial period must lapse.

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

9. **Acoustic Review**

Within 60 days from the operations commencing under the terms of this consent, an acoustic review of the findings prepared by Acoustic Logic (dated 29 September 2023) including the recommendations made (amended by conditions of this consent) shall be carried out on site (between 5.00am - 6.00am on Monday to Saturday) and any necessary action to obtain acoustic compliance, shall be completed within a further 30 days of the assessment. The report associated with the compliance testing is to be furnished to Council for its records.

Reason: To ensure acoustic compliance in an operational situation



In signing this report, I declare that I do not have a Conflict of Interest.

Signed

Adam Richardson, Manager Development Assessments

The application is determined on //, under the delegated authority of:

Adam Richardson, Manager Development Assessments

ITEM 3.6	DA2023/0857 - 31A AMIENS ROAD CLONTARF - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Adam Richardson
TRIM FILE REF	2023/748955
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations 3 ↓ Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2023/0857 for alterations and additions to a dwelling house on land at Lot 2 DP 827554, 31A Amiens Road CLONTARF, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0857
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Responsible Officer:	Phil Lane
Land to be developed (Address):	Lot 2 DP 827554, 31 A Amiens Road CLONTARF NSW 2093
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Mark Antony Jarvis Jennifer Ann Doherty
Applicant:	Andrew Robert Croft

Application Lodged:	10/07/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	17/07/2023 to 31/07/2023
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 63% 4.4 Floor space ratio: 10%
Recommendation:	Approval

Estimated Cost of Works:	\$ 221,003.00
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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 the proposed works have a building height which exceeds the 8.5 metres Height of Buildings (HOB) Development Standard under Clause 4.3 Manly LEP 2013. The height of the proposal ranges between 7 metres and 13.9 metres, with a maximum departure of 63% from the development standard. The application is accompanied by a written Clause 4.6 variation request which identifies that breach of the standard is a

result of the extremely steep site topography with a substantial fall down the site. Despite the technical building height breach, the height and scale of the building is compatible with the adjoining buildings which consist of two and three storey buildings with elevated balconies with a similar maximum height.

The proposal also results in a minor departure of 10% from the Floor Space Ratio (FSR) development standard. The Manly LEP 2013 prescribes a maximum FSR of 0.4:1 for the site and the proposal has a FSR of 0.44:1. The application is accompanied by a written Clause 4.6 variation request which explains that the variation to the FSR standard arises primarily due to the increase to bedroom 4 on the ground floor and does not increase the footprint or bulk of the building as it is located underneath the dining room on the upper floor. It is also noted that the site is 'undersized allotment' as identified within the Manly DCP and that the proposed FSR is consistent with the FSR dispensation permitted within the Manly DCP for undersized allotments and as such, the variation of acceptable.

The application was notified and received one (1) unique submission from the surrounding properties. Concerns raised in the objection relate to privacy impacts. This issue has been addressed in the report, with a recommended condition in relation to mitigation measures proposed.

The assessment has found that the application is an acceptable built form and retains an acceptable level of amenity for the surrounding properties (subject to recommended conditions), this report concludes with a recommendation that the DDP approves this application.

PROPOSED DEVELOPMENT IN DETAIL

The proposed alterations and additions to a dwelling house as follows:-

Ground Floor (lowest floor level)

- Entertainment Area/Deck with batten privacy screen
- New stairs

Lower Floor

- New covered rear balcony with batten privacy screens
- New front balcony
- Extension to Bedroom 4
- New Balcony off bedroom 1

Upper Floor

- New covered site entry/walkway
- New covered rear balcony with batten privacy screens
- New Balcony off Lounge Room

An elevator is centrally located within the existing dwelling footprint linking the lower floor, ground floor and upper floor levels.

ASSESSMENT INTRODUCTION

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

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

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

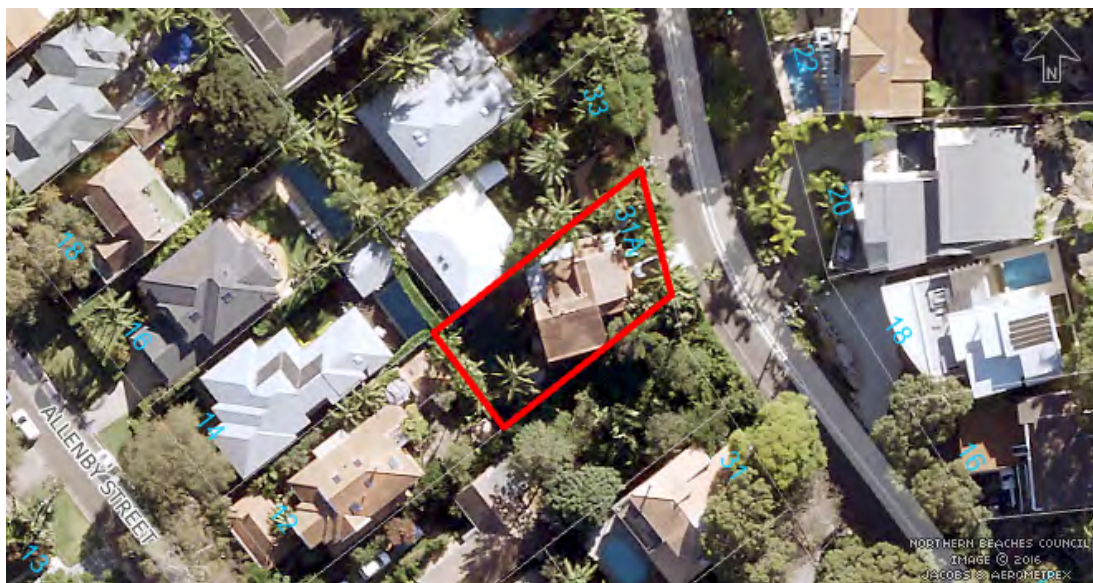
SUMMARY OF ASSESSMENT ISSUES

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

SITE DESCRIPTION

Property Description:	Lot 2 DP 827554 , 31 A Amiens Road CLONTARF NSW 2093
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the western side of Amiens Road.</p> <p>The site is irregular in shape with a frontage of 16.65m along Amiens Road and a depth of 34.18m along the northern boundary and 27.48m along the southern. The site has a surveyed area of 469.8m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a two storey dwelling house.</p> <p>The site falls sharply from Amiens Road to the rear western boundary with a fall of approximately 36% sloping grade.</p> <p>The site has a mix of native and exotic species of trees, shrubs and plants.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by single, double and three storey dwellings with associated outbuildings/structures with landscaped gardens.</p>

Map:



SITE HISTORY

DA0003/1991 - Boundary Adjustment approved 6 December 1991

DA2023/0141 - Alterations and additions to a dwelling house application returned to applicant as follows:-

- Inadequate Owners Consent
- Deficient Boundary Identification Survey
- BASIX Certificate (Out of Date)

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 Matters for Consideration	Comments
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested for an amended Clause 4.6 for the variation to the Building Height and a separate to Clause 4.6 to address the minor breach to the Floor Space Ratio of the Manly Local Environmental Plan 2013 (MLEP 2013). This additional information has been accepted by Council and considered within this assessment report.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 17/07/2023 to 31/07/2023 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 Leif Olav Anders Stromnes Mrs Justyna Marta Stromnes	33 Amiens Road CLONTARF NSW 2093

The following issues were raised in the submissions:

- Privacy

The above issues are addressed as follows:

- **Privacy**

The submissions raised concerns over the window W8 for Bedroom 4 located on the ground floor.

Comment:

Issues was raised by the adjoining owner to the north (No. 33 Amiens Road) over the northern facing window (W8) for Bedroom 4 which faces directly to the northern side boundary. The main access stair leading from Amiens Road and the recently approved development application (DA2022/1999 - Construction of a detached carport and home office) approved 9 May 2023 at No.33 Amiens Road (see below) will create possible privacy and amenity issues for both properties:

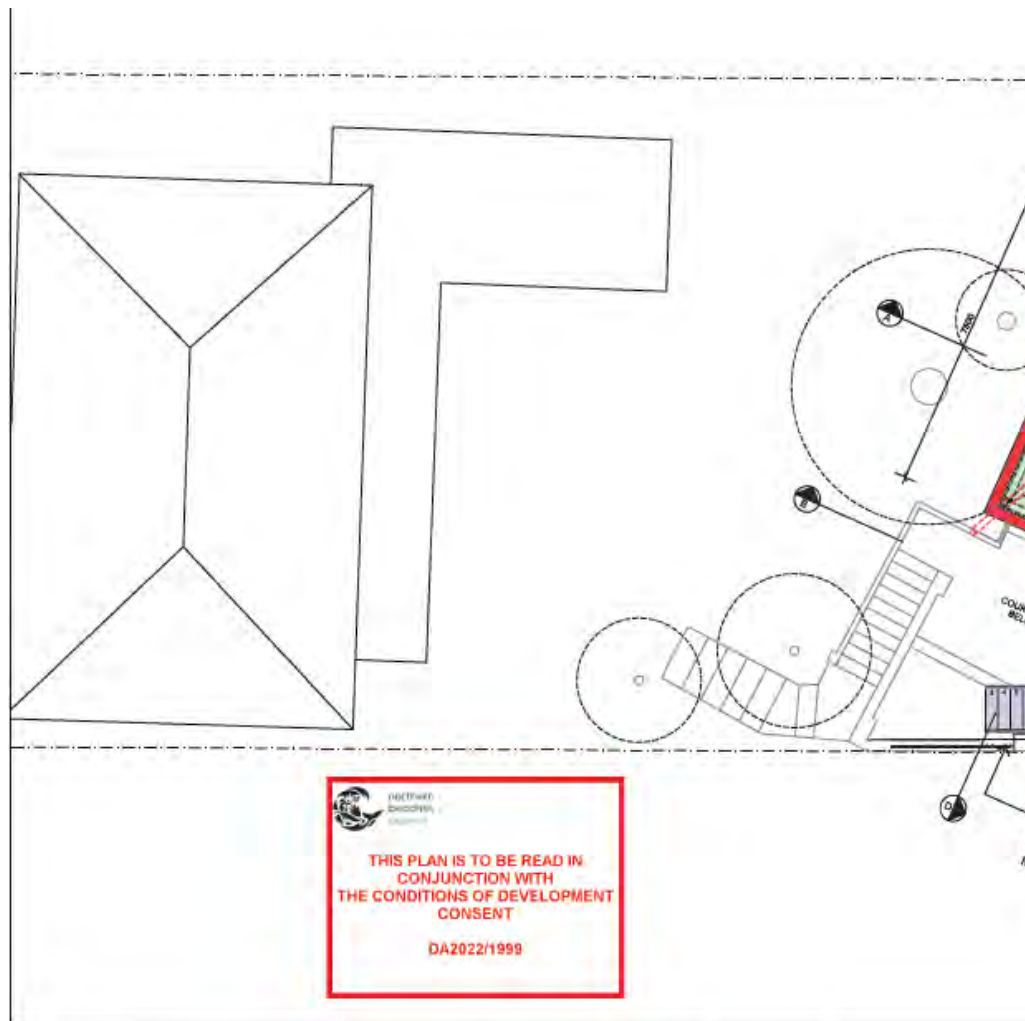


Figure 1 - Note the existing and approved new stairs for No. 33 Amiens Road located on the common side boundary shared with the subject site (No. 31A Amiens Road).

It is noted that Bedroom 4 also has windows facing to the east (W9) and west (W7) and it is considered subject to conditioning of this northern window (W8) with a high sill height of 1.5m (above the finished floor level) that reasonable privacy will be maintained for both parties. Additionally it is considered that Bedroom 4 will still receive adequate light and ventilation in accordance with the requirement for the National Construction Code (NCC).

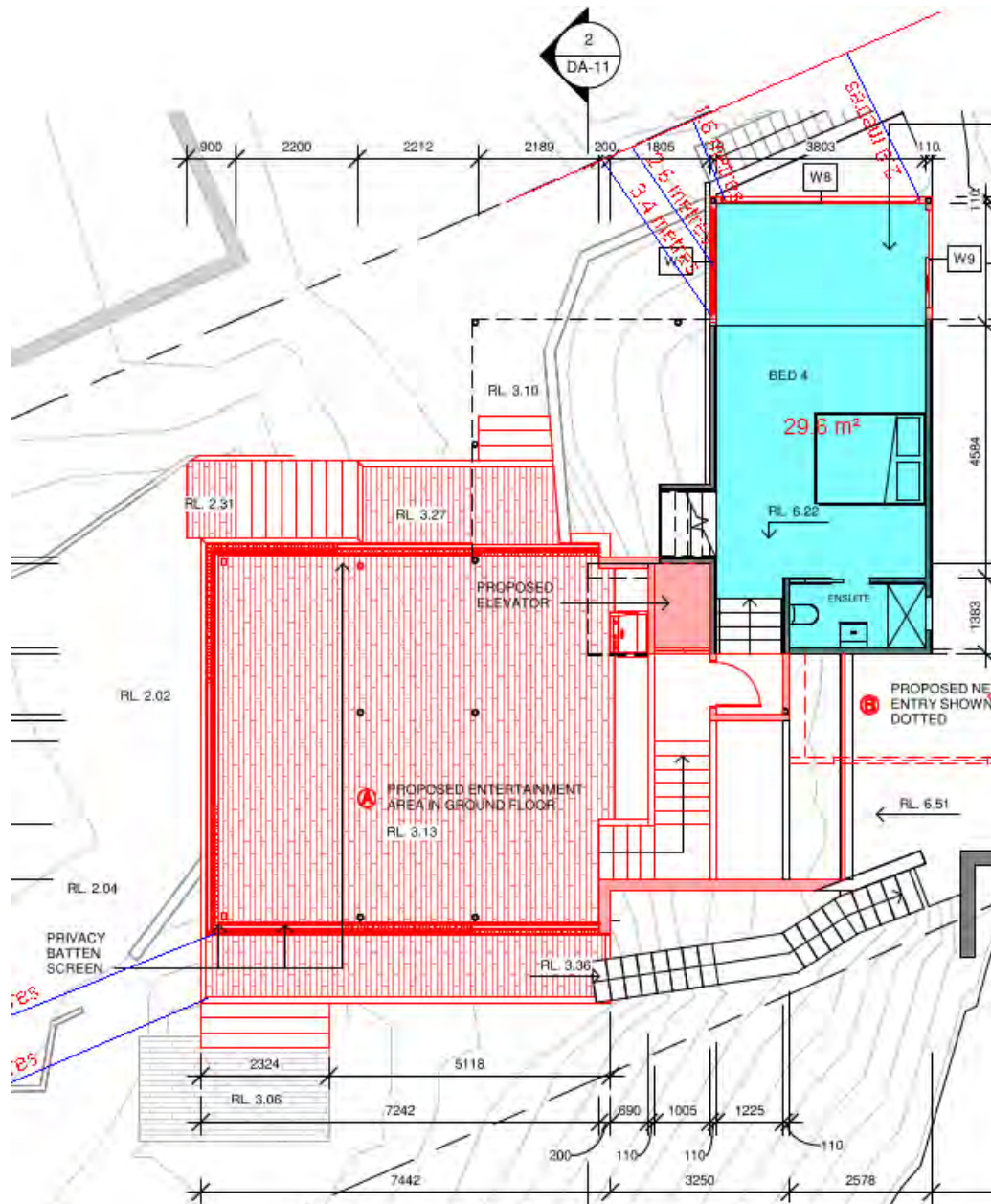


Figure 2 - Demonstrating windows proposed for Bedroom 4 - W7 facing west, W8 facing north and W9 facing east

Given the above and with the inclusion of a suitable condition in relation to privacy mitigation measures, it is considered that the potential privacy impacts have been overcome.

REFERRALS

Internal Referral Body	Comments
NECC (Flooding)	<p>Supported, subject to Conditions</p> <p>The proposal seeks consent for alterations and additions to an existing three store residential dwelling.</p> <p>The identified Probable Maximum Flood (PMF) extent is expected to impact the lower South-Western third of the property.</p> <p>The proposal is compliant with Section 5.4.3 Flood Prone Land from the Manly DCP 2013 and Clause 5.21(2)(a-e) of the Manly LEP 2013, with consideration of Clause 5.21(3)(a-d) of the Manly LEP 2013.</p>

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A471745_03) dated 28 June 2023.

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	13.9m	63%	No
Floor Space Ratio:	0.4:1	0.44:1	10%	No

Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	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
5.21 Flood planning	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

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:	7m to 13.9m
Percentage variation to requirement:	63%

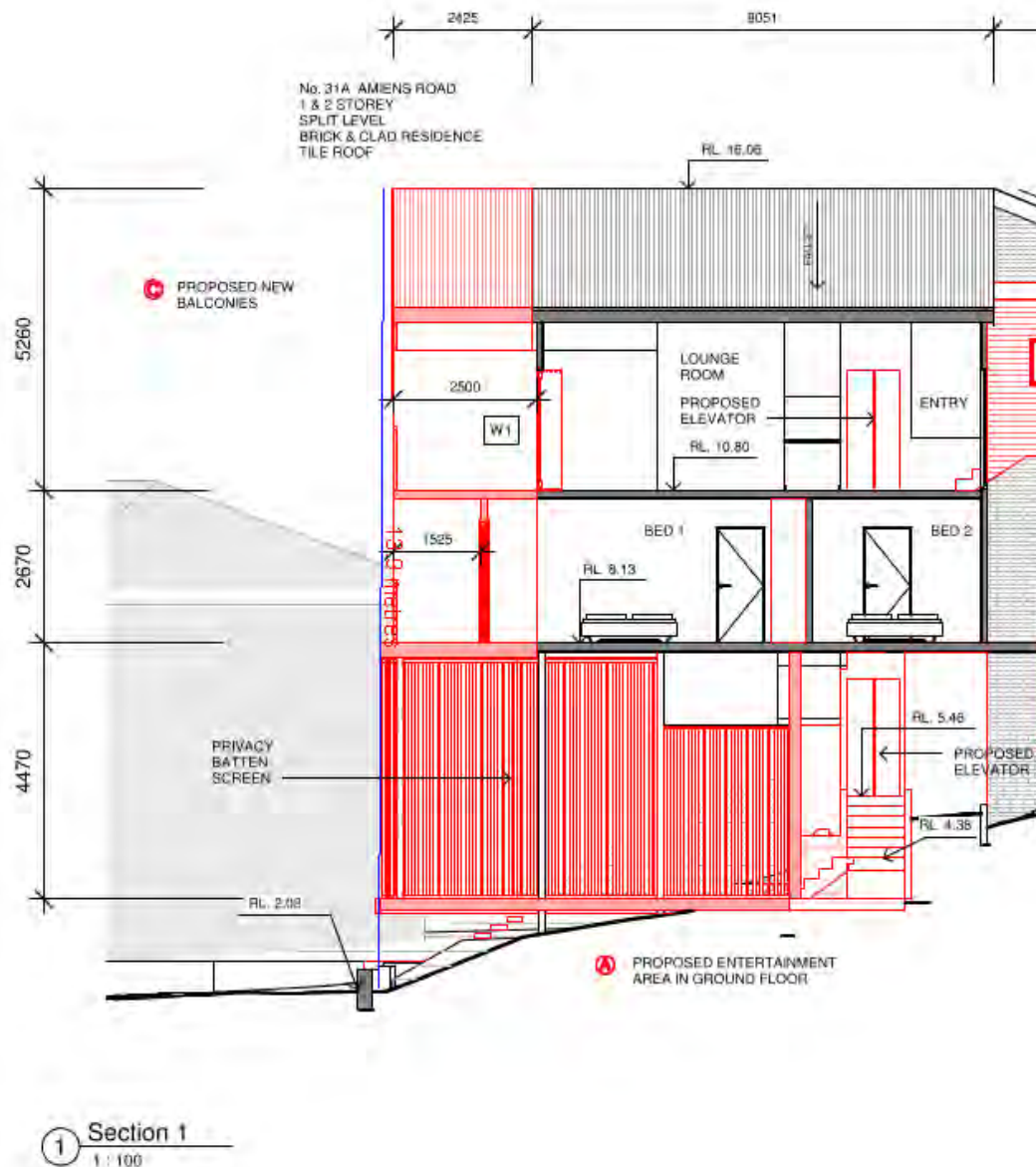


Figure 3 - Section 1 showing maximum building height of 13.9m.

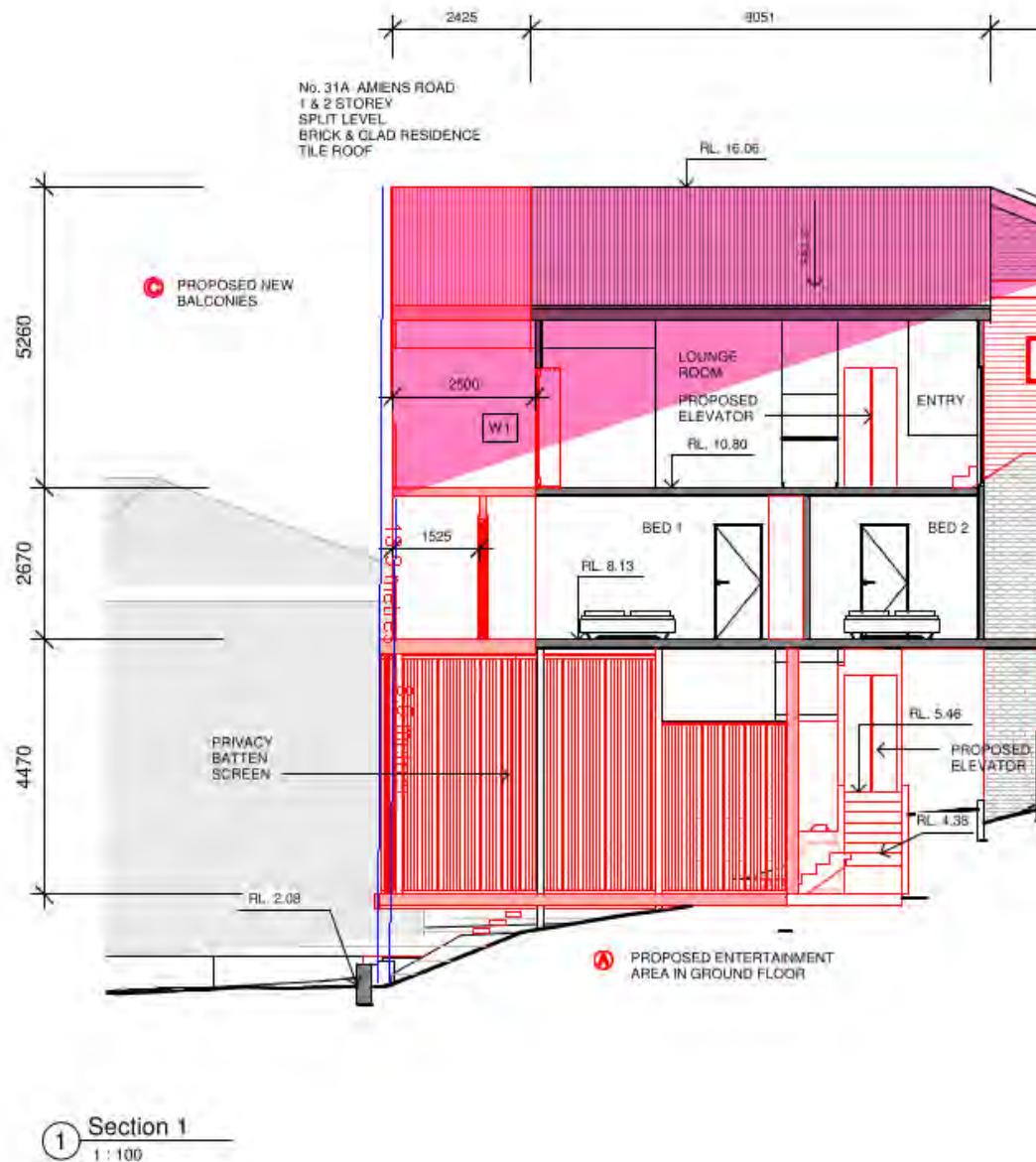


Figure 4 - Extract from plans showing a section plan and 8.5m height plane. Purple areas represent areas of encroachment, noting that a large extent of the breach is attributed to existing built form.

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

"The development as proposed is considered to not contravene the objectives of the height control.

The proposed dwelling addition is comparable in bulk and scale to other such developments in Amiens Road and will no impact on the streetscape.

The overall ridge RL will remain unchanged with a small roof addition to cover the proposed balconies representing the height exceedance.

The variation to the height control is minor in nature and directly related to the steep nature of the site."

Further comments as follows from the applicant:-

"As outlined above in the development standard objectives, strict adherence to the development standard in this instance is unreasonable and unnecessary in that the proposed additions are minor in scale, located to the rear of the development and match the existing ridge height.

The roof extension is some 2.4m in length. In order to match the existing ridge level, the exceedance in the height control is created. This is a direct result of the steep nature of the site, not any increase in the building height.

The development in its current form, with the requested height variation, is consistent with surrounding dwellings in terms of build for, bulk and scale and will not have any adverse impacts on surrounding development in terms of;

- *Overshadowing*
- *Privacy*
- *Visual Dominance*
- *Streetscape and Character*
- *Views*

The development is generally compliant with all other controls contained in the LEP and DCP and in this instance, due to the existing character of the street and the fact that the development will not adversely impact upon adjoining development, it is considered appropriate to allow a variation to the height control."

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 restricts the ability to provide built form of high amenity that is compliant with the development standard, particularly given the siting of the existing dwelling. It is considered that the proposal is consistent with adjoining and surrounding dwellings in relation to built form particularly building height and is supportable in this instance.

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 appropriately responds to the slope of the land, with the largest portion of encroachment a result of the existing dwelling house and the addition of the rear balcony and roof over this area. The proposal will sit comfortably in the context of the surrounding buildings and will be consistent with the prevailing building heights of the adjoining buildings as established by the existing dwellings on Amiens Road.

The topographic landscape is very steep, with a significant drop off from Amiens Road to the rear western boundary of the subject site. This is what causes the numerical breach of the building height.

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. 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.

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

Comment: The proposal is considered to maintain reasonable levels of solar access to public and 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.

Comment: The site is mapped with the Foreshore Scenic Protection Area 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 (Middle Harbour).

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 still provides a dwelling house, 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
Proposed:	0.44:1
Percentage variation to requirement:	10%

Note: the lower ground floor entertainment area has been excluded as gross floor area calculation in that whilst it is enclosed, it is enclosed with moveable batten screens and is susceptible to weather. Therefore this area is not taken to be enclosed.

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 4.4 - Floor space ratio development standards is not expressly excluded from the operation of this clause.

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

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

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

(a) the consent authority is satisfied that:

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

*is proposed to be carried out, and
(b) the concurrence of the Secretary has been obtained.*

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*

- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The applicants written request argues, in part:

- *The development as proposed is considered to not contravene the objectives of the Floor Space Ratio control.*
- *The proposed dwelling addition is comparable in bulk and scale to other such developments in Amiens Road and will no impact on the streetscape.*
- *The developments side setbacks will remain consistent with the existing built form and the minor variation is considered to have a negligible impact on bulk and impacts to adjoining land.*
- *Strict adherence to the development standard in this instance is unreasonable and unnecessary in that the proposed additions are minor in scale, providing no tangible impact on the appearance of the development, on bulk or impact to adjacent property.*
- *The development in its current form, with the requested variation, is consistent with surrounding dwellings in terms of build for, bulk and scale and will not have any adverse impacts on surrounding development in terms of;*
 - *Overshadowing*
 - *Privacy*
 - *Visual Dominance*
 - *Streetscape and Character*
 - *Views*

Council's Comment on Environmental Planning Grounds

The above environmental planning grounds are agreed to be sufficient, and it is noted that the subject site is recognised as an 'undersized' allotment as identified within the Manly DCP. The proposal meets the 'undersized allotment' requirement of the Manly DCP, not exceeding a total GFA of 300m² or an FSR of 0.63:1, when adjusted for the dispensation provided for in the DCP for undersized allotments. 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 also acceptable 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 two storey building to the street, 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. There is a suitably sized area of landscaping within the front and rear setback.

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 reasonable levels of solar access to the surrounding buildings and privacy is maintained through suitable conditioning and spatial separation.

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 still maintain a dwelling house, 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 Floor space ratio Development Standard associated with a single dwelling house (Class 1 building).

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 469.8m ²	Requirement	Proposed	% Variation	Complies
4.1.2.1 Wall Height	N: 8m (based on gradient 1:4+)	9.7m	21.25% (1.7m)	No
	S: 8m (based on gradient 1:4+)	10m	25% (2m)	No
4.1.2.2 Number of Storeys	2	2	-	Yes
4.1.2.3 Roof Height	2.5m	2.847m (existing)	-	Unaltered
4.1.4.1 Street Front Setbacks	6m	4.555m	-	Unaltered*

4.1.4.2 Side Setbacks and Secondary Street Frontages	N: 2.15m (based on wall height)	0.644m (existing)	-	Unaltered
	S: 1.49m (based on wall height)	0.422m (existing)	-	Unaltered
	Windows: 3m (Northern Elevation)	1.6m - 3.4m	Nil - 46.7%	No
	Windows: 3m (Southern Elevation)	2.5m - 3.5m	Nil - 16.7%	No
4.1.4.4 Rear Setbacks	8m	7.8m	2.5% (0.2m)	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area (281.8m ²)	56.6% (265.7m ²)	5.7% (16.1m ²)	No
	Open space above ground 25% of total open space	15% (39.7m ²)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space (187.9m ²)	48.1% (226m ²)	-	Yes
4.1.5.3 Private Open Space	18m ²	>18m ²	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	-	Yes

* New entry alignment is inline with the frontage of the garage

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Part 3	Yes	Yes
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3 Landscaping	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
Part 4	Yes	Yes
4.1 Residential Development Controls	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4 Other Development (all LEP Zones)	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
Part 5	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4 Environmentally Sensitive Lands	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedules	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

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

Description of non-compliance

4.1.2.1 Wall Height

The control requires the maximum external wall height to be calculated based on the slope of the land under the proposed wall.

Based on a gradient of 1:4 +, the maximum permitted wall height is 8 metres.

The proposed alterations and additions to the dwelling is to have a maximum wall height of 9.7 metres on the north elevations, representing a variation of 21.25% (1.7 metres) and 10 metres on the south elevations, representing a variation of 25% (2 metres).

Merit consideration

There are no underlying objectives of this control under which to consider the merits of this variation. This clause instead relies on the objectives for the Height of Buildings at Clause 4.3 in the Manly LEP 2013. An assessment against these objectives is as follows:

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

Comment:

The surrounding area contains a mix of roof forms including flat and skillion and pitched forms. The proposal maintains a pitched roof form is expected to complement with this character. The proposed development is considered to provide a building height and roof form that is consistent given the topographic landscape, prevailing building heights within the vicinity and desired streetscape character in this locality.

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

Comment:

The proposed alterations and additions to the dwelling are considered to be of a bulk and scale which is appropriate in the context of the site and surrounds.

(c) to minimise disruption to the following—

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

Comment:

The proposal will not have any unreasonable impact on views, and maintains view corridors through the site as a result of reasonable setbacks and appropriate modulation.

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

Comment:

The proposal provides sufficient setbacks and modulation to allow for corridors for sunlight. The proposal complies with the minimum solar access DCP requirements.

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

Comment:

Not applicable.

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

4.1.3 Floor Space Ratio (FSR)

The proposal presents a Floor Space Ratio of 0.44:1 which represents a variation of 10% to the 0.4:1 FSR requirement under the MLEP 2013.

MDCP provides guidance in assessing the floor space ratio of undersized allotments.

The site is located in 'Area R' on the MLEP 2013 Lot Size Map, meaning that, based on an actual lot size of 469.8m² calculation of the floor space ratio can be made as if the lot size were 750m².

As such, the floor space ratio of the proposed development is less than the 0.63:1 permitted when adjusted for the dispensation.

A detailed assessment of the FSR variation has been undertaken within the section of this report relating to Clause 4.6 of the Manly LEP 2013. In conclusion, the applicant has adequately justified that compliance with the FSR Development Standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the variation.

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

Description of Non-Compliance

Clause 4.1.4.2 Side setbacks and secondary street frontages requires all new windows that face side boundaries to be setback at least 3 metres.

The proposed development includes the following new windows which are non-compliant with the above numerical requirement:

- W06: Setback between 2.5 metres - 3.5 metres from southern boundary. Located on upper floor and associated with a new entry
- W07: Setback between 2.6 metres - 3.4 metres from northern boundary. Located on ground floor and associated with a bedroom 4
- W08: Setback between 1.6 metres - 2.9 metres from northern boundary. Located on ground floor and associated with a bedroom 4

It is noted that the ground floor side setbacks are non-compliant with the numerical requirement, however, this setback is as existing and will be unaltered.

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 windows are located on the side elevations of the building, which will not be easily viewed from the street. The proposed additions respect the character and setting of the building.

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 additions will maintain the existing setback of the building resulting in non-compliance with the window numerical requirement of 3 metres. W08 is located within close proximity to the northern boundary line, hence the window will be modified through recommended condition with a highlight window with a floor to sill height of 1.5 metres. W07 although non-compliant is located to the ground floor level, and has a varying setback of 2.6 metres and 3.4 metres and given it's orientation to the west and it is considered no treatment is necessary.

Additionally, W06 is facing south and given it is position near the front of the building and the proximity of the adjoining dwelling and private open space of No. 10 Allenby Street it is considered that there are no privacy treatments or mitigation measures necessary in this case. The side setback area on the southern side boundary of the subject site consists of vegetation which aid in visual privacy. No additional impacts to view loss, solar access, pattern of buildings or traffic issues will result from the proposed works.

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

Comment

The proposed works will not disrupt the existing flexibility of the site.

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 existing topography of the land will be unaltered, with no significant forms of vegetation being proposed for removal. Acceptable dimensions of landscaped open space is maintained on site to accommodate for any future plantings, deep soil zones, and vegetation.

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

Comment

The subject site is not located within bush fire prone land and therefore this objective is not relevant.

Having regard to the above assessment, it is concluded that the objectives of the control are achieved. Therefore, the application is supported on merit in this particular circumstance.

4.1.5 Open Space and Landscaping

Description of non-compliance

The proposal comprises of a total open space of 56.6% (265.7m²), which is a variation of 5.7% (16.1m²) to the control requiring 60% (281.8m²).

Merit consideration:

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

Objective 1) To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.

Comment:

The proposal does not seek to remove any important landscape features and vegetation.

Objective 2) To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.

Comment:

The proposal readily complies with the soft landscaped area and will retain landscaping within the rear. The works do not require the removal of any significant landscaping.

Objective 3) To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.

Comment:

The proposed alterations and additions are not expected to result in any unreasonable solar access, privacy or view impacts. The works are a demonstrate a reasonable height given the steep terrain of the subject site and will retain a reasonable level of building separation.

Objective 4) To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.

Comment:

The proposal readily complies with the landscaped area and is not expected to have any unreasonable impacts on stormwater runoff.

Objective 5) To minimise the spread of weeds and the degradation of private and public open space.

Comment:

The proposal is not expected to result in the spread of weeds and the degradation of private and public open space.

Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.

Comment:

The proposal is not expected to have any adverse impacts on wildlife habitat and will retain potential for wildlife corridors.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$2,210 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$221,003.

CONCLUSION

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

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

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

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

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

Council **is** satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings 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 alterations and additions to an existing dwelling house.

The application is referred to the DDP as there is a departure of more than 10% from the height of buildings development standard.

One (1) submission was received during the notification period and this has been addressed within this assessment report.

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 the surrounding sites. The departure from the FSR standard is due to the site being an 'undersized allotment' as identified within the MDCP. As such, there are sufficient environmental planning grounds to support the breaches to the development standard in this circumstance.

The concerns raised in the objection has been addressed within the assessment report.

The critical assessment issue relating to privacy has been resolved to the satisfaction of Council's Planner and are detailed within this assessment report.

The assessment has found that the application is acceptable from a built form and retains reasonable amenity for the surrounding properties (subject to recommended conditions), this report concludes with a recommendation that the DDP approves this 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 and 4.4 Floor Space Ratio development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2023/0857 for Alterations and additions to a dwelling house on land at Lot 2 DP 827554, 31 A Amiens Road, CLONTARF, 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-03	-	Site Plan & Ground Floor Plan	Arclab	17 January 2023
DA-04	-	Lower Floor Plan & Upper Floor Plan	Arclab	17 January 2023
DA-05	-	Upper Floor Detail	Arclab	17 January 2023
DA-06	-	Ground Floor Detail	Arclab	17 January 2023
DA-07	-	East & West Elevation & Window Schedule	Arclab	17 January 2023
DA-08	-	Southern Elevation	Arclab	17 January 2023
DA-09	-	Northern Elevation	Arclab	17 January 2023
DA-10	-	Section 1	Arclab	17 January 2023
DA-11	-	Section 2	Arclab	17 January 2023

Approved Reports and Documentation	
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Document Title	Version Number	Prepared By	Date of Document
Geotechnical Assessment	-	ASCENTGEO	3 August 2022
BASIX Certificate (A471745_03)	3	Arclab Pty Ltd	28 June 2023
Waste Management Plan	-	Arclab Pty Ltd	11 August 2022

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	Received
Ausgrid	Ausgrid Referral Response	14 July 2023

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

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

3. Prescribed Conditions

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

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

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

4. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether

the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the following is required:
 - i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
 - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished

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

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

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$2,210.03 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 \$221,003.00.

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

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

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

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

6. **Security Bond**

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

7. **Stormwater Drainage Disposal**

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

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

the Certifier prior to the issue of a Construction Certificate.

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

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

Reason: To ensure satisfactory management of stormwater.

8. Amendments to the approved plans

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

- W8 within bedroom 4 is to be fitted with window having a sill height of 1.5m (minimum) above the finished floor in this room.

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

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

9. Installation and Maintenance of Sediment Control

Prior to any works commencing on site, including demolition, an erosion and sediment control plan must be prepared by a suitably qualified person in accordance with the following documents and provided to the Principal Certifier:

1. Council's relevant development control plan,
2. The guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the Blue Book) (as amended from time to time), and
3. The 'Do it Right On-Site, Soil and Water Management for the Construction Industry' (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust) (as amended from time to time).

Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To ensure no substance other than rainwater enters the stormwater system and waterways.

10. Compliance with Standards

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

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

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

11. **Sydney Water "Tap In"**

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

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

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

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

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

DURING BUILDING WORK

12. **Removing, Handling and Disposing of Asbestos**

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

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

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

13. **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. **Demolition Works - Asbestos**

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifier, all receipts issued by the receiving tip as

evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

15. **Survey Certificate**

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

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

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

16. **Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

17. **Stormwater 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.

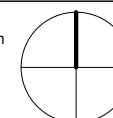
Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

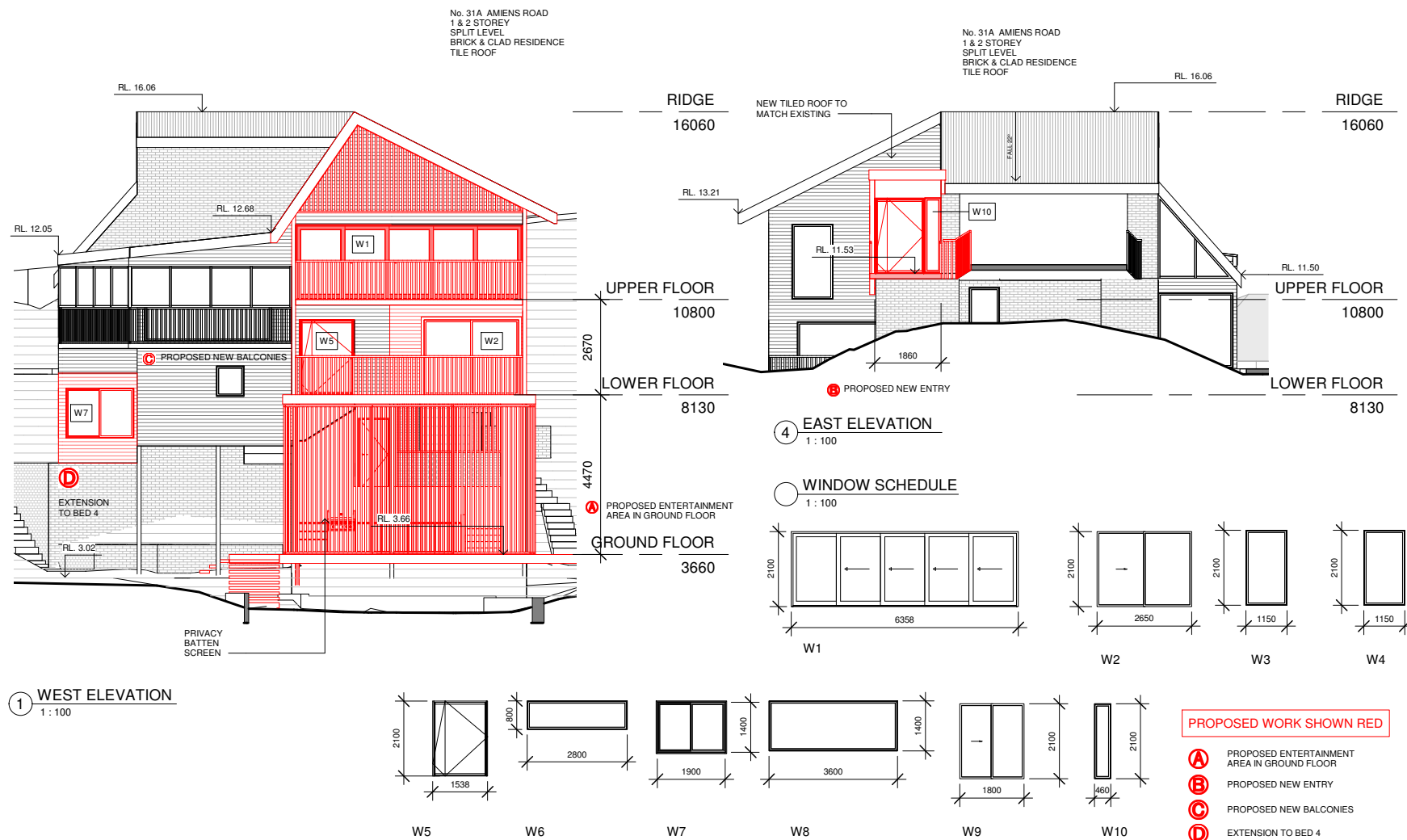
ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

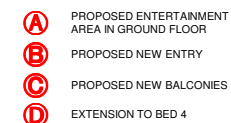
19. **Mechanical Plant/Motor Noise**

The elevator motor and any other mechanical plant installed shall not produce noise levels that exceed 5dB(A) 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.



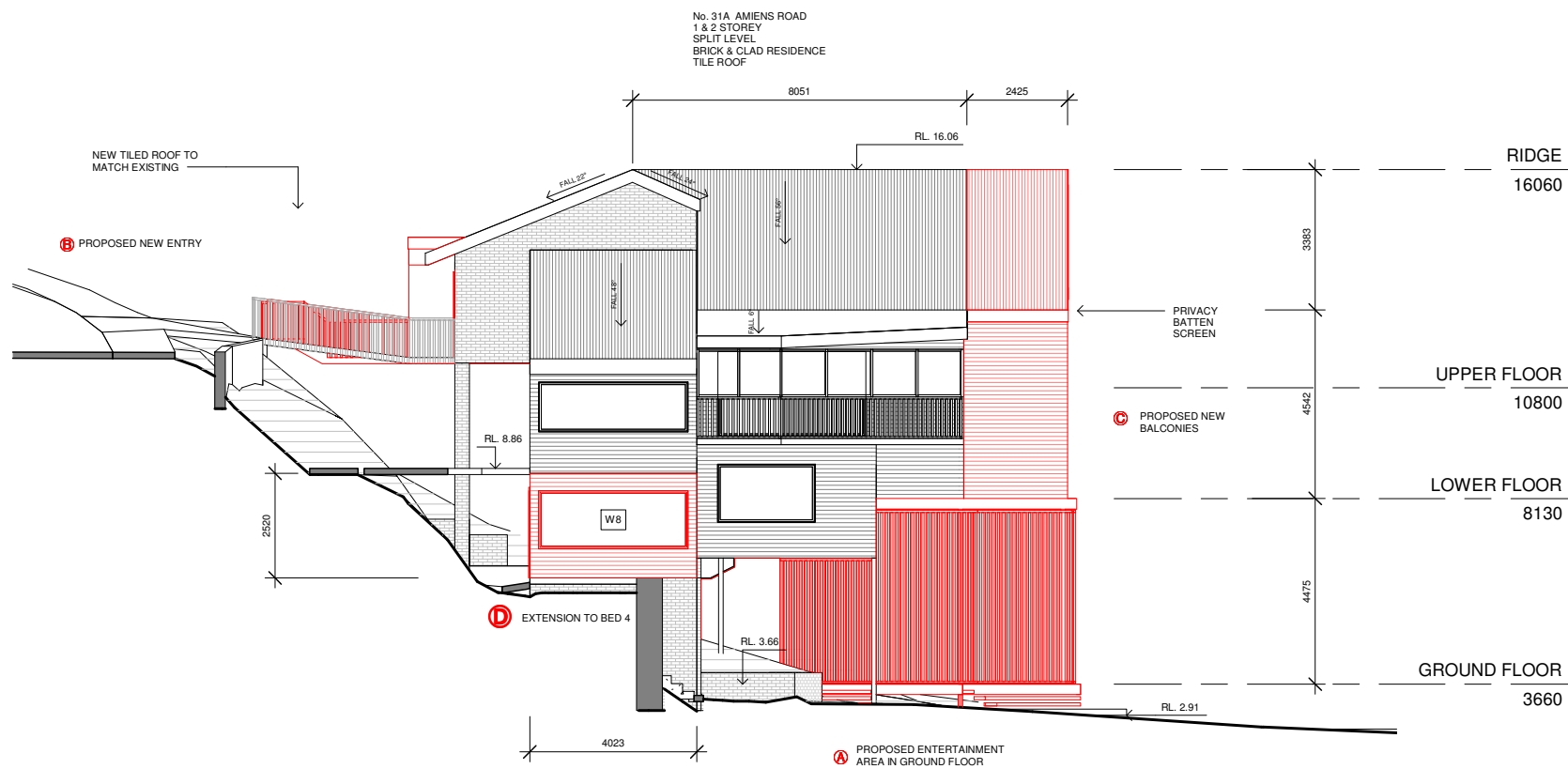




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Drawn	Scale	Sheet	Date	Job N°.	Sheet N°	Issue/Revision
RAGM	1 : 100	A 3	17/1/23	0251	DA-08	





1 NORTH ELEVATION
1 : 100

PROPOSED WORK SHOWN RED

- (A)** PROPOSED ENTERTAINMENT AREA IN GROUND FLOOR
- (B)** PROPOSED NEW ENTRY
- (C)** PROPOSED NEW BALCONIES
- (D)** EXTENSION TO BED 4



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Sheet Title
NORTH ELEVATION

Project Address
31A AMIENS ROAD, CLONTARF

Client
DOHERTY HOUSE

Documentation
DEVELOPMENT APPLICATION

All works to be in accordance with Australian Standards, The Building Code of Australia, other relevant codes, and with Manufacturers' recommendations and instructions. Do not scale from drawings.
Verify all dimensions on site prior to construction.
The drawing is copyright and may not be used without written consent from ARCLAB PTY LTD.

Drawn	Scale	Sheet	Date	Job N°	Sheet N°	Issue/Revision
RAGM	1 : 100	A 3	17/1/23	0251	DA-09	



untapped **PLANNING**

Clause 4.6 Variation Height

“Alterations and Additions to existing Dwelling”

31A Amiens Road, Clontarf

Lot 2 DP 827554

Prepared for: ArcLab
Date: July 2022

1. Executive Summary

1.1 Introduction

Untapped Planning has been commissioned by Arclab to prepare a clause 4.6 variation for the alterations and additions to an existing dwelling on Lot 2 DP 827554 at 31A Amens Road, Clontarf.

2. Planning Controls

Part 4 - Principal Development Standards

Clause 4.3 Height of Buildings.

The subject site is mapped as having a maximum building height of 8.5m.

The existing dwelling has a maximum height off 13m. The proposed roof addition, while maintaining the existing ridge level, will have a maximum height of 13.9m.

A Clause 4.6 variation is included in this statement.

Clause 4.6 Exceptions to Development Standards

Clause 4.6 of the Manly Local Environmental Plan 2013 allows for variations to development standards contained within the plan.

Clause 4.6 states;

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

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

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

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

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

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

- (a) *the consent authority is satisfied that:*
- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Secretary has been obtained.*
- (5) *In deciding whether to grant concurrence, the Secretary must consider:*
- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*
- (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*
- (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
- Note. When this Plan was made it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition or Zone R5 Large Lot Residential.*
- (7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following:*
- (a) *a development standard for complying development,*
 - (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
 - (c) *clause 5.4,*
 - (ca) *clause 8.1 or 8.2.*

In addressing a variation to a development control in the standard instrument the following questions are to be addressed

1. What is the name of the Environmental Planning Instrument that applies to the land?

The Environmental Planning Instrument relevant to this development is the Manly Local Environmental Plan 2013.

2. What is the zoning of the land?

The site is zoned R2 – Low Density Residential under the provisions of the Manly Local Environmental Plan 2013.

3. What are the objectives of the zone?

The R2 – Low Density Residential objectives are;

1 Objectives of 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.*

The proposed development is considered to be consistent with the zone objectives in that it will provide for the housing needs of the community.

The development is sympathetic to the scenic, aesthetic and cultural heritage of the locality and the build form is consistent with other recent constructions in the street.

The proposal will not prevent other land uses that provide services or facilities to meet the day to day needs of residents.

4. What is the development standard being varied?

It is proposed to vary the development standard pertaining to maximum height on the site.

5. Under what clause is the development standard listed in the environmental planning instrument?

The development standard relating to height is Clause 4.3 of the Manly Local Environmental Plan 2013.

6. What are the objectives of the development standard?

The objectives of clause 4.3 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,*
 - (b) to control the bulk and scale of buildings,*
 - (c) to minimise disruption to the following—*
 - (i) views to nearby residential development from public spaces (including the harbour and foreshores),*

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

The development as proposed is considered to not contravene the objectives of the height control. The proposed dwelling addition is comparable in bulk and scale to other such developments in Amiens Road and will no impact on the streetscape.

The overall ridge RL will remain unchanged with a small roof addition to cover the proposed balconies representing the height exceedance.

The variation to the height control is minor in nature and directly related to the steep nature of the site.

7. What is the numeric value of the development standard in the Environmental Planning Instrument?

The development standard as indicated in the Manly Local Environmental Plan Height Maps sheet is 8.5m.

8. What is the proposed numerical value of the development standard in your development application?

The development as proposed has a maximum Height of 13.9m.

9. What is the percentage variation (between your proposal and the environmental planning instrument)?

The variation of 5.4m represents a 63% variation.

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

As outlined above in the development standard objectives, strict adherence to the development standard in this instance is unreasonable and unnecessary in that the proposed additions are minor in scale, located to the rear of the development and match the existing ridge height.

The roof extension is some 2.4m in length. In order to match the existing ridge level, the exceedance in the height control is created. This is a direct result of the steep nature of the site, not any increase in the building height.

The development in its current form, with the requested height variation, is consistent with surrounding dwellings in terms of build for, bulk and scale and will not have any adverse impacts on surrounding development in terms of;

- Overshadowing

- Privacy
- Visual Dominance
- Streetscape and Character
- Views

The development is generally compliant with all other controls contained in the LEP and DCP and in this instance, due to the existing character of the street and the fact that the development will not adversely impact upon adjoining development, it is considered appropriate to allow a variation to the height control.

11. How would strict compliance hinder the attainment of the objectives specified in Section 5(a)(i) and (ii) of the Act.

The objectives contained within Section 5(a)(i) and (ii) of the Act state;

The objects of this Act are:

(a) to encourage:

- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
- (ii) the promotion and co-ordination of the orderly and economic use and development of land,*

As has been noted earlier in the report, the general character of the area is residential in nature with many new dwellings either approved or recently constructed. The proposal is consistent in scale, height and bulk to these dwellings. The proposed rood addition is a 2.4m long addition at the existing ridge level.

Strict compliance with the development standard would not increase the social or economic welfare of the community or have any impact on the orderly development of land.

The proposal in its current form does not overshadow or visually dominate adjoining dwellings, so strict adherence to the floor space ratio control in this instance will not result in any net public benefit.

Approval of the development in its current form will not hinder the attainment of the objectives contained within Section 5(a)(i) and (ii) of the Act.

12. Is the development standard a performance-based control? Give details.

No, the development standard in this instance is a numerical standard.

13. Would strict compliance with the standard, in your particular case be unreasonable of unnecessary? Why?

Strict compliance would be unreasonable and unnecessary given the topography of the site. In order to comply would require the proposed upper balcony be uncovered. The proposal does not seek to alter the existing ridge level, merely the new 2.4m long section of roof exceeds the height control due to the steep nature of the site falling away.

The development is similar in bulk, setback and scale to nearby dwellings and the slope of the site is responsible for the height.

There does not appear to be any clear benefit from modifying the addition to rectify the minor departure and strict compliance in this instance is both unreasonable and unnecessary.

14. Are there sufficient environmental planning grounds to justify contravening the development standard? Give Details.

As has been demonstrated above, the development is consistent in terms of bulk, scale and siting to other residential developments in the immediate area. The variation is minor in departure and only covers a small portion of the roof ridge. The development will have no adverse impacts to surrounding allotments in terms of;

- Overshadowing
- Privacy
- Visual Dominance
- Streetscape and Character
- View Loss

It is further recognised that the development is consistent with the character and bulk and scale of other development in the street and will not have an adverse streetscape impacts.

The development is generally compliant with the remainder of the LEP and DCP requirements. Given this compliance with other planning controls and the lack of physical and environmental impacts from the development, it is considered that there is grounds to justify contravening the development standard.

Requiring the development to be modified to comply with the height standards, will not lesson impacts or improve the amenity of adjoining neighbors, nor will it make a perceivable positive impact to the streetscape.

For these reasons it is considered that there is sufficient merit in granting a variation to the height standard.

ITEM 3.7	DA2023/0763 - 940 BARRENJOEY ROAD PALM BEACH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Steve Findlay
TRIM FILE REF	2023/749086
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 DA2023/0763 for Alterations and additions to a dwelling house on land at Lot 5 DP 13686, 940 Barrenjoey Road PALM BEACH, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0763
Responsible Officer:	Gareth David
Land to be developed (Address):	Lot 5 DP 13686, 940 Barrenjoey Road PALM BEACH NSW 2108
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Damon Bodie Leeder Stephanie Diane Kemp Leeder
Applicant:	Damon Bodie Leeder
Application Lodged:	23/06/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	30/06/2023 to 14/07/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 34%
Recommendation:	Approval
Estimated Cost of Works:	\$ 2,589,899.49

EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to an existing dwelling as an "Amending DA" to a previous consent.

The application includes a request under Clause 4.6 of the Pittwater LEP 2014 to vary the development standard for height. As the application proposes a variation to the height development standard of more than 10% and involves a Class 1 Dwelling, the application is referred to Development Determination Panel (DDP) for determination.

The maximum height of the proposed development has been measured at 11.4m which represents

a variation of 34% to the prescribed 8.5m building height limit. Due to the steep slope of the site and the siting and form of the existing building, the non-compliant height element would not substantially alter the character or appearance of the existing dwelling. When assessed on its merits, it is concluded that the bulk and scale of the proposal will be commensurate with the existing built form of the site and surrounding built environment and that the height breach will not result in unreasonable amenity impacts to adjoining neighbours.

No submissions were received in response to neighbour notification.

The subject site has a previous operational consent which is DA N0718/07, that was granted in 2008 for *"Alterations and additions to the existing dwelling and direction of garage and studio"*.

The works to provide for the construction of the garage and inclinor have been commenced under separate Construction Certificates issued in 2009. The approved additions and alterations to the dwelling have not commenced and the consent remains operational pursuant to DAN0718/07. The proposed works detailed under the current DA submission seek to supersede the approved works to the dwelling previously approved under DA N0718/07, and therefore the current proposal intends to serve as a request to modify the previous consent (as an "Amending DA") in accordance with S4.17(1) (c) and S4.17(5) of the EPA Act and Section 67 of the EPA Regulations 2021. This has been secured by a condition of consent to ensure that the consents do not conflict with one another.

On the balance, although the proposed development is non-compliant with a number of planning controls, it is considered that many of these are a consequence of the context of the site and the existing built form. Overall, it is considered that the proposed alterations and additions represent a relatively modest increase to the existing built form. The proposed works do not include significant site disturbance or environmental impact to facilitate additional floor area as the proposed additions are largely sited upon the existing building footprint.

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

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

PROPOSED DEVELOPMENT IN DETAIL

The new works will provide for demolition works and the construction of alterations and additions to an existing dwelling.

Specifically the proposed works consist of the following:

Undercroft Level

- New undercroft works comprising retaining walls, store and water tank

Lower Ground Floor

- Proposed new lower ground floor level to provide for entry, deck, two bedrooms with decks, bathroom, study, laundry/mud room, internal access to ground level, and covered walkway

Ground Floor

- Proposed alterations and additions to existing ground floor level to provide for new bedroom with dressing and ensuite, infill of existing window and door, and new lift shaft and internal access stairs to upper and lower levels
- Line of existing deck to be cut back from existing tree

First Floor

- Proposed alterations and additions to existing first floor level to provide for new kitchen, deck, infill of existing windows, and new lift shaft and internal access stairs to ground floor level

The proposal is largely within the footprint of the existing dwelling and will not require the removal of any significant trees.

The subject site has a previous operational consent considered under DA N0718/07 which provided for "Alterations and additions to the existing dwelling and direction of garage and studio", determined under Notice of Determination dated 12 February 2008. The works to provide for the construction of the garage and inclinator were commenced under Construction Certificates CC0265/09, dated 12 August 2009 & CC0361/09, dated 16 September 2009.

The approved additions and alterations to the dwelling have not commenced and the consent remains operational pursuant to DA N0718/07.

The proposed works detailed under the current DA submission seek to supersede the approved works to the dwelling previously approved under DA N0718/07, and therefore the current proposal intends to serve as a request to modify the previous consent in the form of an Amending DA, which is in accordance with S4.17(1)(c) and S4.17(5) of the EPA Act and Section 67 of the EPA Regulations 2021.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
Pittwater 21 Development Control Plan - A4.12 Palm Beach Locality
Pittwater 21 Development Control Plan - B8.6 Construction and Demolition - Traffic Management Plan
Pittwater 21 Development Control Plan - C1.3 View Sharing
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - C1.14 Separately Accessible Structures
Pittwater 21 Development Control Plan - D12.6 Side and rear building line
Pittwater 21 Development Control Plan - D12.8 Building envelope
Pittwater 21 Development Control Plan - D12.10 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 5 DP 13686 , 940 Barrenjoey Road PALM BEACH NSW 2108
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the eastern (high side) side of Barrenjoey Road.</p> <p>The site is irregular in shape with a frontage of 15.24m along Barrenjoey Road and a depth of 69.5m. The site has a surveyed area of 1011m².</p> <p>The site is located within the C4 Environmental Living zone and accommodates a elevated two-storey dwelling located at the rear of the site (east). A garage is located more centrally onsite (downslope), which is accessed via a right of carriageway which extends across multiple properties to the south (from Barrenjoey Road). There are houses on either side, however, these are both much closer to the road (west) than the dwelling on the subject site. There is a right of way across the lower portion of the site, benefiting the neighbouring property to the north (942 Barrenjoey Road).</p> <p>The site slopes steeply, with a crossfall of approximately 30m from the north-east (rear) to the south-west (frontage).</p> <p>The site is heavily vegetated with native species and canopy trees. Portions of the site are identified on the Department of Planning and Environment's Biodiversity Values Map.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by</p>

one, two and three storey dwellings on steeply sloping sites within landscaped/bushland settings. Dwellings are primarily oriented to capture views of Pittwater waterway located to the west. MacKay Reserve is located to the east of the site.

Map:



SITE HISTORY

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

- **N0718/07** - Development Application for alterations and additions to the existing dwelling and erection of garage and studio - Approved 12/02/2008 - partially constructed - Garage and inclinator. Studio and dwelling additions not constructed.
- **BC0094/10** - Building Certificate for timber retaining walls, pathway and timber steps at the front of the allotment - Issued August 2010
- **PLM2021/0240** - Pre-lodgement Meeting - Modification to Development Consent N0718/07 granted for alterations and additions to the existing dwelling and erection of garage and studio. These notes concluded:

"A review of the proposed development based on the specific issues raised in the written advice application, has been carried out and you are advised that the modified development would not be considered under a modification application as it is inconsistent with the requirement of being 'substantially the same development'"

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider “Prescribed conditions” of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact</p>

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application (prepared by Building Code & Bushfire Hazard Solutions Pty Limited, dated 02/05/2023). The report stated that the bushfire attack level of the site is “Flame Zone”.

The application was referred to the NSW Rural Fire Service for further assessment. The NSW RFS raised no objections to approval, subject to conditions. The recommendations of the Bush Fire Report , along with the conditions from the NSW RFS have been included as part of the recommended conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 30/06/2023 to 14/07/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The proposal is supported with regard to landscape issues.</p> <p>Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause C4 zone Environmental Living, and the following Pittwater 21 DCP controls (but not limited to):</p> <ul style="list-style-type: none"> • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • D12 Palm Beach Locality <p>The site is located in the C4 Environmental Living zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment, including the retention of natural landscape features and existing trees, to satisfy the landscape objectives of the C4 Environmental Living zone.</p> <p>No concerns are raised with the proposed alterations and additions as they are mainly contained within the footprint of the existing dwelling. No trees are proposed for removal, and the works will remove decking from around an existing significant tree, which is supported. Landscape Referral supports the tree protection recommendations outlined in the Arboricultural Impact Assessment, including the engagement of a Project Arborist, subject to the imposed conditions.</p>
NECC (Bushland and Biodiversity)	<p>The proposal seeks approval for alterations and additions to a single dwelling.</p> <p>The comments in this referral relate to the following applicable controls and provisions:</p> <ul style="list-style-type: none"> • NSW Biodiversity Conservation Act 2016 • NSW Biodiversity Conservation Regulation 2017 • SEPP (Resilience and Hazards) 2021 - Littoral Rainforest and Proximity Area • Planning for Bushfire Protection 2019 • Pittwater LEP - Clause 7.6 Biodiversity Protection • Pittwater 21 DCP - Clause B4.2 Flora and Fauna Conservation Category 1 and Wildlife Corridor • Pittwater 21 DCP - Clause B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor <p>Portions of the site are identified on the Department of Planning and Environment's Biodiversity Values Map (BV Map). Under the NSW Biodiversity Conservation Act, any removal of native vegetation from within mapped areas will trigger the Biodiversity Offsets Scheme (BOS) and the requirement for a Biodiversity Development Assessment Report (BDAR). However, the submitted plans and documentation indicate that the proposed works are located outside of the BV Map area and therefore will not trigger entry into the BOS.</p>

Internal Referral Body	Comments
	<p>No tree removal has been identified within the proposal and the submitted Arboricultural Impact assessment has concluded that all trees on site can be retained if adequate tree protection measures are in place before and during works. Furthermore, no landscaping works have been proposed as part of the application.</p> <p>The Bushfire report submitted with the application has awarded the site a level of risk of "Flame zone" and requested that the property be maintained as an Inner Protection Area. No additional vegetation clearing has been recommended for the establishment of Asset Protection Zones.</p> <p>The proposed alterations and additions would take place in previously disturbed areas of the site and are unlikely to impact on native flora and fauna.</p> <p>The development is designed, sited and will be managed to avoid any significant adverse environmental impact.</p>
NECC (Coast and Catchments)	The property is located within the the Coastal Use and Environment Area, however the development is unlikely to impact on these attributes.
NECC (Development Engineering)	The proposed works are in Region 1. On-site detention is not required as the additional impervious area is less than 50m ² . A geotechnical report has been provided. Vehicle crossing construction is not proposed. I have no objections to the proposed development.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Rural Fire Service - Local Branch - EP&A Act, s4.14	The application was referred to the NSW Rural Fire Service. The NSW RFS raised no objections to approval, subject to conditions. The recommendations of the Bush Fire Report, along with the conditions from the NSW RFS have been included as part of the recommended conditions of consent.
Aboriginal Heritage Office	<p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under</p>

External Referral Body	Comments
	Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.A496521 dated 06/06/2023).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021**Chapter 2 – Coastal Management**

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

Division 1 Coastal Wetlands and littoral rainforest area**2.8 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 application does not proposed tree removal. Council's Biodiversity Officer has reviewed the proposal and has raised no objection or concern in relation to impacts to littoral rainforest.

Division 3 Coastal environment area**2.10 Development on land within the coastal environment area**

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

Comment:

The proposed works are not likely to cause an adverse impact upon the matters identified in this clause. The proposed works do not discourage public access or amenity along the foreshore area nor impact on natural foreshore processes. During the assessment, works proposed within the foreshore

are were deleted. The proposal has been reviewed by Council's Coastal Officer, Development Engineer and Bushland & Biodiversity Officer who have raised no objection to the works and associated impacts to the surrounding natural environment.

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

Comment:

Council is satisfied the proposed works are designed, and can be managed, to avoid adverse impacts based upon the matters identified in this clause. The application has been reviewed by Council's Coast and Catchment Officer who has raised no objection to the works.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

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

Comment:

The proposed development is unlikely to cause an adverse impact to existing public open space and safe access to and along the foreshore and beach for members of the public, including persons with a disability.

The proposed development will maintain the existing, safe access to and along the foreshore and beach and will not cause any overshadowing, wind funnelling or loss of views from public places to

foreshores. The visual amenity and scenic qualities of the coast, including the coastal headlands, will be preserved. A condition has been included to ensure that if any Aboriginal engravings or relics are unearthed as part of the development, works will cease immediately and the relevant authorities will be notified.

The proposed development will also not have an adverse impact on the cultural and built environmental heritage.

As such, it is considered that the proposed development has been designed, sited and will be managed to avoid an adverse impact on the aforementioned cultural and environmental aspects.

Furthermore, the proposed development is considered to be of an acceptable bulk, scale and size that is generally compatible with the existing site and surrounding coastal and built environment, which consist of low-density residential dwellings. Existing landscaping will assist to visually screen the bulk and scale of the built form and integrate the built form into the landscape.

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 application has been reviewed by Council's Coastal Engineer and Development Engineer who are satisfied that the development is not likely to cause increased risk of coastal hazards.

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

Chapter 4 – Remediation of Land

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

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 or 10.0m *Variation under Clause 2D PLEP	11.4m (roof awning) 10.4m (balcony balustrade) 10.3m (roof awning) Other elements will comply with 10.0m height provision under Clause 2D of PLEP	34% (Max)	No

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
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

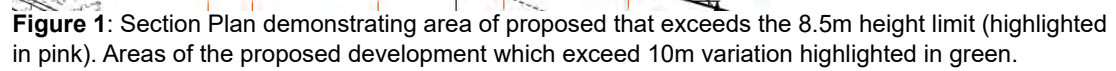
4.3 Height of buildings

Clause 4.3 (2) stipulates that the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. The subject site is located within Area 'I' of the Height of Buildings Map which has a maximum height of 8.5m.

Clause 2D of the height of building control within PLEP 2014 states that the height of a building may exceed the 8.5 metre height, but not be more than 10.0 metres if the building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%), the portion of works is minor, the building responds to the topography of the land and the objectives of this clause are achieved

As demonstrated in figure 1 below, the new additions would predominately be below the 10m building height requirement under clause Clause 2D within PLEP 2014. The works above the 8.5m but below 10m (highlighted in pink within figure 1) are minor in nature, complement the existing built form and are primarily a result of the siting of the building and substantial slope of the land.

The non-compliance generally occur as the land falls away steeply and the building footprint is situated on a slope which exceeds the 30% requirement. The works are considered to meet the objectives of *Clause 4.3 Height of buildings* of PLEP 2014 and do not result in unreasonable impacts to neighbouring amenity, the natural environment of the desired character of the locality.



(highlighted in pink).

As demonstrated in figure 1 above, the new additions which exceed the 10m height variation consist of new retractable roof awnings and replacement balcony balustrades (highlighted in green). This would result in the development having a maximum building height of 11.4m, which represents a 34% variation from the 8.5m height requirement. These elements are considered under Clause 4.6 of PLEP below.

4.6 Exceptions to development standards

Description of Non-compliance

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	11.4m
Percentage variation to requirement:	34%

Assessment of Request to Vary a Development Standard

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

Clause 4.6 Exceptions to Development Standards

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

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

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

Comment:

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

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

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act (cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*

- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

Applicants Written Request

The applicants written request argues, in part:

- *The proposed development will maintain the general bulk and scale of the existing surrounding development and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).*
- *Similarly, the proposed development will provide for improved amenity within a built form which is compatible with the streetscape of Barrenjoey Road which also promotes the orderly and economic use of the land (cl 1.3(c)).*
- *The proposed development improves the amenity of the occupants and respects surrounding properties through the inclusion of the proposed retractable awning to allow for improved light and solar access and breezes, by locating the development where it will not unreasonably obstruct views across the site and will maintain the views from the site (1.3(g)).*
- *The proposed retractable awning will provide for good solar protection for the building occupants when utilising their existing decks. Given the significant slope of the land, the decks provide the primary opportunity for outdoor recreation space and passive sitting and entertaining areas. Being inclusion of the retractable awning will assist in providing for solar protection for the owners when utilising the deck, which is consistent with the Objective (1.3(h)).*
- *The non-compliance with the building height control arises as a result of the sloping topography of the site as the site levels fall towards the west and north-west and the location and the form of the existing dwelling, notwithstanding that the proposal seeks to provide for additions and alterations to the existing dwelling and which do not increase the existing overall height of the dwelling.*
- *The proposed new works utilise the existing building undercroft and add additional floor areas in a manner which does not significantly increase the building bulk.*
- *The proposed works do not result in unreasonable amenity impacts to adjoining neighbours*
- *The proposal provides for a development which follows the siting of existing dwelling and maintains a compatible building form, which is in keeping with the desired future character of the locality.*

Planners Comments

Council's Planning Assessment Officer generally concurs with the applicant's justification.

The slope and topography of the land is considered steep. It is considered that due to the slope of the site and the siting of the existing building that the non-compliance would not substantially alter the character or appearance of the existing dwelling. It is further noted that the works are largely confined

to the existing building footprint and do not result in unreasonable excavation, tree removal or environmental impact. The non-compliance would also be a direct result of the existing built form.

It is also agreed that the proposal will not have any unreasonable amenity impact to surrounding properties as a result of the height non-compliance. The proposal has been designed to allow for improved amenity, without compromising the amenity of adjoining properties.

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the C4 Environmental Living Zone. An assessment against these objectives is provided below.

Objectives of Development Standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the PLEP 2014 are:

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

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

Comment:

The proposed additions are comparable with the built form of the existing dwelling and surrounding newer dwellings located on Barrenjoey Road. The works will be below the ridge height of the existing dwelling and will not unreasonably increase the overall height or bulk of the building. The development proposes to maintain a similar building footprint as to what currently exists and does not result in unreasonable excavation, tree removal or environmental impact. The substantial front setback and maintenance of a vegetation buffer also allows for visual relief towards Barrenjoey Road and Pittwater Waterway. As such, the building height breach is not considered to impact on the desired character of the locality.

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

Comment:

The development is located on the downward slope of a escarpment which is characterised by undulating topography. This results in variable built forms along the road, such that there is an eclectic mix of height and scale in which to be compatible with. The noncompliance is considered to be relatively minor and does not unreasonably conflict with the height and scale of the existing dwelling or surrounding and nearby development. The proposed additions are comparable with the built form of the existing dwelling. The works will be below the ridge of the existing dwelling and are compatible with the existing built form. Compliance with the height control is constrained by the sloping topography of the site and location of existing development, and the development is considered appropriate and compatible within the locality

c) to minimise any overshadowing of neighbouring properties,

Comment:

The submitted shadow diagrams demonstrate that the building height breaching elements will not contribute to unreasonable shadow impact on neighbouring properties.

d) to allow for the reasonable sharing of views,

Comment:

The proposed development adequately preserves views and vistas to and from public and private places for the reasons detailed in the section of this report relating to Clause C1.3 *View Sharing* of the P21 DCP. Given siting of nearby built form, existing views and vistas are anticipated to be equitably retained.

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

Comment:

The variation to the height control occurs as a result of the siting of the existing dwelling in conjunction with the sloping topography of the site. The development proposes no significant excavation or tree removal to facilitate additional floor area. The proposals design maintains the open style front balcony areas to provide a "stepped" look when viewed from the street and neighbouring properties. The proposal reflects the established built form character of newer dwellings in the locality where multi-level, variably stepped houses are prevalent, due to the steep topography of the land.

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

Comment:

The proposed works will maintain consistency with the general height and scale of the existing building. No unreasonable amenity impacts will be caused for the subject site or adjoining properties. The proposal will not require the removal of any significant vegetation or require any significant site disturbance or excavation to facilitate additional floor area, with minimal alteration to the natural ground levels. No heritage conservation areas or heritage items will be affected as a result of this application.

The underlying objectives of the C4 Environmental Living Zone are:

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

Comment:

The proposed works do not include any significant excavation or site disturbance to facilitate additional floor area and the proposed additions is to be largely sited within the existing building footprint. The proposal will not require the removal of any significant vegetation. The proposal respects the scale and form and relative height of the existing dwelling and surrounding development within the vicinity. The proposal reflects the established built form character of existing site and newer dwellings in the vicinity where multi-level, variably stepped houses are prevalent, due to the steep topography of the land screening as view from Pittwater.

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

Comment:

The proposed works will maintain consistency with the general height and scale of the existing dwelling. No unreasonable amenity impacts are envisioned for the subject site or adjoining properties. The proposal will not require the removal of any significant vegetation or require any significant site disturbance or excavation.

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

Comment:

The variation to the height control occurs as a result of the siting of the existing dwelling in conjunction with the sloping topography of the site. The development proposes to maintain a similar building footprint and scale as to what exists and does not result in unreasonable excavation, tree removal or environmental impact. The proposal reflects the established built form character of existing site and surrounding dwellings in the vicinity where multi-level, variably stepped houses are prevalent, due to the steep topography of the land. Existing landscaping, will assist to visually screen the bulk and scale of the built form and integrate the built form into the landscape.

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

Comment:

The proposal will not impact upon riparian or foreshore vegetation or wildlife corridors. The proposed development works are largely upon existing footprint and no impact occurs to existing trees, and the landscape setting outcome is not impacted. The application has been reviewed by Council's Bushland & Biodiversity Officer and Landscape Officer who has raised no objection subject to recommended conditions.

Conclusion

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the C4 Environmental Living Zone.

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

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

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

7.2 Earthworks

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

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

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

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

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

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

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

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

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

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

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

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

(f) the likelihood of disturbing relics

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

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

environmentally sensitive area

Comment: The development has been assessed by Council's Coast & Catchment Officer and Biodiversity Officers, who have raised no objection to the proposal subject to conditions.

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

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

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

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

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of PLEP 2014, Pittwater 21 DCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

7.6 Biodiversity protection

Before determining a development application for development on land to which this clause applies, this clause requires the consent authority to consider:

(a) whether the development is likely to have:

(i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and

(ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and

(iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and

(iv) any adverse impact on the habitat elements providing connectivity on the land, and

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the development will not have any adverse impact on the condition, ecological value and significance of the fauna and flora on the land; the importance of the vegetation on the land to the habitat and survival of native fauna; or the habitat elements providing connectivity on the land. Council is also satisfied that the development will not unreasonably fragment, disturb, or diminish the biodiversity structure, function, or composition of the land.

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

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the proposal includes appropriate measures to avoid, minimise, or mitigate the impacts of the development.

Before granting development consent, this clause also requires the consent authority to be satisfied that:

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

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the development is designed, sited and will be managed to any significant adverse environmental impact.

7.7 Geotechnical hazards

Under Clause 7.7 Geotechnical Hazards, before determining a development application for development on land to which this clause applies, the consent authority must consider the following matters to decide whether or not the development takes into account all geotechnical risks:

- (a) site layout, including access,*
- (b) the development's design and construction methods,*
- (c) the amount of cut and fill that will be required for the development,*
- (d) waste water management, stormwater and drainage across the land,*
- (e) the geotechnical constraints of the site,*
- (f) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment:

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

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

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

Comment:

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

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

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

Comment:

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

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

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	10m	52m	N/A	Yes
Rear building line	6.5m	2m - 5.2m	69.2% (Max)	No
Side building line	2.5m (N)	1.9m (lower ground floor) 1.8m (first floor)	24%	No
	1m (S)	1.7m	N/A	Yes
Building envelope	3.5m (N)	Outside envelope	N/A	No
	3.5m (S)	Outside envelope	N/A	No
Landscaped area	60% (606.6sqm)	56.4 % (570sqm)	6%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	No	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.2 Flora and Fauna Conservation Category 1 and Wildlife Corridor	Yes	Yes
B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor	Yes	Yes
B5.13 Development on Waterfront Land	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
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan		
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

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	Yes	Yes
D12.6 Side and rear building line	No	Yes
D12.8 Building envelope	No	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	No	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

A4.12 Palm Beach Locality

The proposed development consists of a part two/part three storey dwelling house, where the locality calls for two-storey development.

The development proposes alterations and additions to provide for a new lower ground floor level to replace the existing undercroft. This would result in the appearance of a three storey building where the locality calls for two-storey development. The proposed works would not increase the overall ridge height or substantially alter the bulk and scale of the current building. Furthermore, the proposal would require minimal site disturbance, would not result in the loss of any substantial trees or vegetation and would retain screen planting along the front which will assist in reducing the impact of the built form and softening the appearance of the dwelling when viewed from a public domain.

On balance, subject to recommended conditions, the proposal is considered consistent with the desired future character of the Palm Beach locality.

B8.6 Construction and Demolition - Traffic Management Plan

A condition requiring the provision of a construction management plan has been included in the recommendation of this report given its unusual access arrangements.

C1.3 View Sharing

Given the relative location of adjoining dwellings, situated further to the west of the proposed works, the proposal is not anticipated to result in unreasonable view loss to adjoining neighbours. Adjoining neighbours are anticipated to retain views over their front (western) boundaries. Additionally, no submissions in relation to view loss have been received.

C1.5 Visual Privacy

Given the location of the existing dwelling (and proposed additions) in relation to windows and principle private open space of adjoining dwellings (which are located further to the west), the proposal is not considered to result in unreasonable privacy impacts. Substantial vegetation will also be retained to mitigate potential privacy impacts. This spatial distance and retention of vegetation to ensures that a reasonable degree of privacy is maintained. Additionally, no submissions in relation to privacy have been received by adjoining neighbours.

C1.14 Separately Accessible Structures

The Pittwater 21 DCP stipulates within Clause C1.14 that separately accessible structures may be permitted provided that they are not designed for separate habitation and do not contain any cooking facilities. The application proposes alterations and additions to provide a separately accessible lower ground floor. In order to achieve compliance with this control, the development will be conditioned over the life of the development so to ensure the lower ground floor addition will not be used for the purposes of separate habitation including a secondary dwelling or dual occupancy and prohibit the installation of cooking facilities.

D12.6 Side and rear building line

Description of Non-compliance

Clause D12.6 of the Pittwater 21 DCP requires development be setback at least 2.5m from at least one side boundary, 1.0m from the other side. This control also requires a rear setback of 6.5m to be provided.

The development proposes the following non-compliance:

Northern side setback: 1.9m (lower ground floor addition) 1.8m (first floor addition). This represents a maximum variation of 28% from the 2.5m requirement.

Southern side setback : Complies

Rear setback: 2m - 5.2m. This represents a maximum variation of 69.2% from the 6.5m requirement.

It should be noted that these proposed works are largely contained within the existing footprint of the building and the non-compliance result primarily as a result of the siting of the existing building. This clause permits a variation where alterations and additions to existing buildings are proposed, maintenance of existing setbacks less than as specified may be considered where it is shown that the outcomes of this clause are achieved. The proposal would generally maintain the established side and rear setbacks of the existing dwelling.

Merit Consideration

With regards to the consideration for a variation, the development is considered against the underlying objectives of the control as follows:

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

Comment:

This matter has been discussed within section A4.12 of this report. The subject site is heavily

constrained by the slope of the site, existing canopy trees and the built form of the existing dwelling. In summary, it is considered the proposal would achieve the desired future character of the locality as the proposed works would not substantially alter the bulk and scale of the current building. Furthermore, the proposal would require minimal site disturbance, would not result in the loss of any substantial trees or vegetation.

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

Comment:

The dwelling is appropriately articulated using recessed and modulated walls, fenestration, balconies, eaves, and changes in materials and roof formation to break up built form. Additionally, the proposal retains suitable landscaping minimise the visual impact of the development from adjoining properties and the public realm. This provides a situation in which presentation of bulk and scale is adequately minimised.

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

Comment:

This matter has been addressed elsewhere within the report (refer to Clause C1.3 View Sharing under P21DCP). In summary, the proposal is considered to equitably preserve the available views and vistas to and/or from public and private places.

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

Comment:

As noted above, no views are to be unreasonably compromise by the proposed works.

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

Comment:

It is considered that the proposal provides adequate spatial separation between adjoining buildings. The application has demonstrated that the proposal will not have an unreasonable impact with regards to solar access. The adjoining properties will maintain solar access in accordance with the DCP requirements. The matter of privacy has been addressed elsewhere within this report in detail (refer Clause C1.5) and it is considered no unreasonable privacy impacts would occur as a result of the development. Furthermore, the proposal will retain suitable landscaping to minimise the visual impact of the development to the adjoining neighbour to assist in the preservation of residential amenity.

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

Comment:

The development does not require the removal of significant vegetation. Existing landscape treatments on site are sufficient and ensure the site is not dominated by the built form. The application has been reviewed by Landscape Officer who has raised no objection to the proposal subject to recommended conditions for tree protection. Subject to recommended conditions, it is considered that remaining vegetation will adequately reduce the visual impact of the built form

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

Comment:

The proposal is of a suitable design when considering the site constraints and the existing built form and siting of the dwelling. The proposal would require minimal site disturbance and would not result in the loss of any substantial trees or vegetation.

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

Comment:

As above, the proposed development includes adequate vegetation and landscaping to soften and visually reduce the built form.

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

Comment:

The proposed development does not adjoin a commercial zone.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PDCP 2014 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

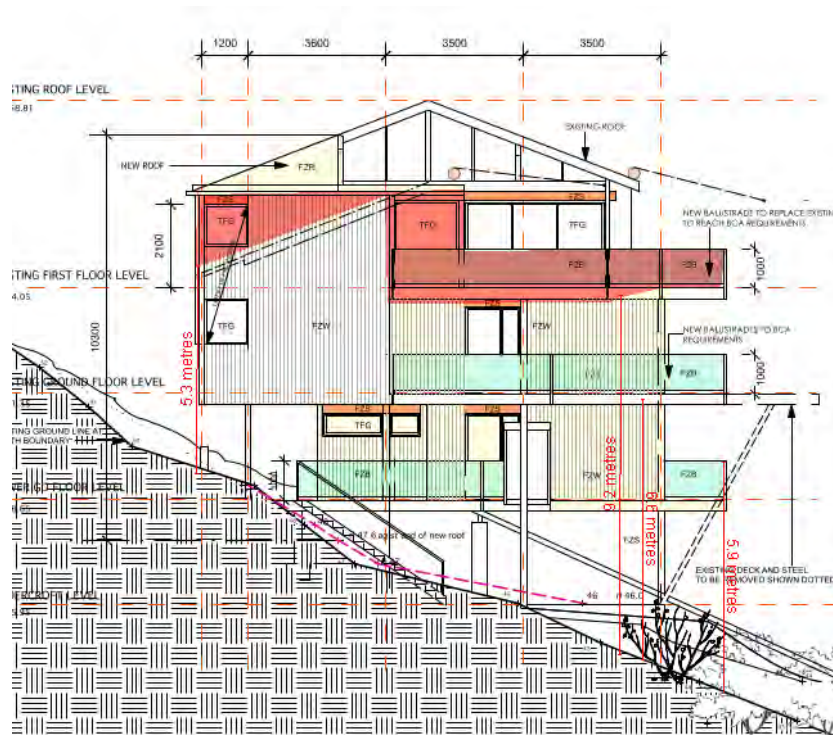
D12.8 Building envelope

Description of Non-compliance

The clause stipulates that buildings are to be projected at 45 degrees from 3.5m above the existing ground level, measured from the side boundaries.

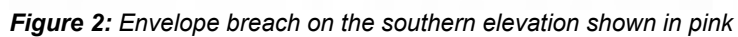
The proposed development encroaches into the prescribed building envelope along both the northern elevation and southern elevation. This variation is represented in figures 1 and 2 below.

This building envelope non-compliance is largely attributed to the existing built form of the dwelling, and the slope of the site, which exceeds 30%. P21DCP allows for a variation to the prescribed building envelope for development on steep sites, subject to consistency with the outcomes of this Clause.



NORTH ELEVATION

Figure 1: Envelope breach on the northern elevation shown in pink



In assessing the non-compliance, the proposal is considered against the outcomes of the control as follows:

- The proposed development is considered to be appropriate within its context, consistent with the bulk and scale of the existing building and surrounding development in the locality and generally in keeping with the desired future character of the locality. This is further discussed in the section of this report relating to *A4.12 Palm Beach Locality* of the Pittwater 21 DCP.

- The proposed development will not readily visible as viewed from the streetscape due to its siting towards the rear of the site and would be well above road level. The proposed dwelling additions

would be generally consistent with the form of the existing dwelling and the proposed dwelling is comparable with that of the built form of surrounding newer dwellings in the vicinity. The proposal retains adequate landscaping in order to screen the built form of the proposed development when viewed from adjoining properties and the public domain. The proposed development is generally set below the height of the trees adjoining the site and in the locality. It is considered that the bulk and scale of the proposal would not be out of character with the existing site, streetscape and wider locale.

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

Comment:

The proposal is designed to integrate with the existing dwelling and is primarily within the existing building footprint. The retention of landscaping surrounding the dwelling will assist in reducing the impact of the built form and softening the appearance of the dwelling when viewed from a public domain and waterway and surrounding properties. The proposal is situated and designed to minimise site disturbance, and tree removal and maintain the natural features of the site.

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

Comment:

The dwelling is appropriately articulated using recessed and modulated walls, fenestration, balconies, eaves, planters and changes in materials and roof formation to break up built form. Additionally, the proposal retains suitable landscaping to minimise the visual impact of the development from adjoining properties and the public realm. This provides a situation in which presentation of bulk and scale is adequately minimised.

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

Comment:

The proposed development adequately preserves views and vistas to and from public and private places for the reasons detailed in the section of this report relating to Clause C1.3 *View Sharing* of the P21 DCP. Given the relative location of adjoining dwellings, situated further to the west of the proposed works, the proposal is not anticipated to result in unreasonable view loss to adjoining neighbours.

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

Comment:

It is considered that the proposal provides adequate spatial separation between adjoining buildings. The application has demonstrated that the proposal will not have an unreasonable impact with regards to solar access. The adjoining properties will maintain solar access in accordance with the DCP requirements. The matter of privacy has been addressed elsewhere within this report in detail (refer Clause C1.5) and it is considered no unreasonable privacy impacts would occur as a result of the development. Furthermore, the proposal will retain suitable landscaping to minimise the visual impact

of the development to the adjoining neighbour to assist in the preservation of residential amenity.

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

Comment:

The development does not require the removal of significant vegetation. Existing landscape treatments on site are sufficient and ensure the site is not dominated by the built form. The application has been reviewed by Landscape Officer who has raised no objection to the proposal subject to recommended conditions for tree protection. Subject to recommended conditions, it is considered that remaining vegetation will adequately reduce the visual impact of the built form.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance

D12.10 Landscaped Area - Environmentally Sensitive Land

The proposed works will result in a net increase in landscaped area on the site. As such, a detailed merit assessment is not required in this instance as the proposal will improve the landscape outcome for the site.

No significant trees or vegetation is proposed for removal and the application has been reviewed by Council's Bushland and Biodiversity Officer and Landscape Officer who have raised no objection to the proposal subject to recommended conditions.

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 \$25,899 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,589,899.

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 application is referred to the Development Determination Panel (DDP) as it involves a variation to the height of buildings development standard of more than 10%.

The application is lodged as an "Amending DA", as the proposed changes to the original consent were not considered by Council at PLM to be substantially the same as the approved development.

No submissions were received in response to the neighbour notification.

On balance, although the proposed development is non-compliant with a number of planning controls, it is considered that many of these are a consequence of the context of the site and the existing built form.

The Clause 4.6 variation is considered to be well-founded and is supported.

Overall, it is considered that the proposed alterations and additions represent a relatively modest

increase to the existing built form. The proposed works do not include significant site disturbance or environmental impact to facilitate additional floor area as the proposed additions are largely sited upon the existing building footprint.

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

A special condition has been imposed to clarify that the new consent will require the applicant to modify the original consent (prior to obtaining a Construction Certificate) so as to avoid confusion and any conflict between the two consents covering the works already undertaken in accordance with the previous consent, and the works the subject of the current application.

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

RECOMMENDATION

That 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 DA2023/0763 for Alterations and additions to a dwelling house on land at Lot 5 DP 13686, 940 Barrenjoey Road, PALM BEACH, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
A.01	D	SITE + ROOF PLANS	Atelier Haefeli Architects	26/06/2023

A.02	C	UNDERCROFT + LOWER GROUND FLOOR PLANS	Atelier Haefeli Architects	07/06/2023
A.03	C	GROUND + FIRST FLOOR PLANS	Atelier Haefeli Architects	07/06/2023
A.04	C	ROOF PLAN + EAST ELEVATION	Atelier Haefeli Architects	07/06/2023
A.05	C	WEST + SOUTH ELEVATIONS	Atelier Haefeli Architects	07/06/2023
A.06	C	NORTH ELEVATION + SECTION AA	Atelier Haefeli Architects	07/06/2023
A.07	B	EAST + SOUTH ELEVATIONS	Atelier Haefeli Architects	07/06/2023
A.08	A	SCHEDULE OF FINISHES	Atelier Haefeli Architects	08/06/2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate (A496521)		Deneb Design	06/06/2023
Geotechnical Hazard Assessment Report	21601Zrpt4 RevA	JK GEOTECHNICS	20/04/2023
Arboricultural Impact Assessment Report	003	Arborsaw (Alex Austin)	13/06/2023
Bushfire Assessment Report (211451)	2	Building Code & Bushfire Hazard Solutions Pty Limited	02/05/2023
Waste Management Plan		-	-

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

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

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

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	29/06/2023
NSW Rural Fire Service	NSW RFS Referral Response (DA20230627002777-Original-1)	07/07/2023

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

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

3. Approved Land Use

Nothing in this consent shall authorise the use of 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.

4. No clearing of vegetation outside property boundaries

This consent does not authorise any tree removal or the clearing of any vegetation outside the property boundaries of the subject site.

Reason: To protect native vegetation and wildlife.

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. **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.

7. **Rural Fire Service Conditions/Requirements**

The development shall be carried out in accordance with all conditions and requirements raised by NSW RFS in their correspondence (Ref.CNR-56863 DA20230627002777-Original-1) dated 07 July 2023.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifying Authority prior to the issuing of the Construction Certificate and final Occupation Certificate.

Reason: To ensure the development is carried out with the requirements of RFS.

8. 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.

9. **No works on adjoining land or right of carriageway**
No Approval is granted under this consent for any works on adjoining land or on the right of carriageway which burdens the subject site.

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

FEES / CHARGES / CONTRIBUTIONS

10. **Policy Controls**

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$25,898.99 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$2,589,899.49.

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.

11. **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

12. **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.

13. **Stormwater Disposal**

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

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

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

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 JK Geotechnics dated 20.04.2023 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. **Boundary Identification Survey**

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

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

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

16. **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.

17. **Structural Adequacy and Excavation Work**

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

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
- (b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: To provide public and private safety.

18. **Compliance with Standards**

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

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

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

19. **Modification of Consent - N0718/07**

In order to ensure consistency between consents, prior to the issue of a Construction Certificate for the development the subject of this development consent, the development consent to development application N0718/07, issued by Pittwater Council on 12 February 2008 ("N0718/07") is to be modified pursuant to s4.17(1)(c) and s4.17(5) of the Environmental Planning and Assessment Act 1979, and s 67 of the Environmental Planning and Assessment Regulation 2021 by:

(i) in the "Decision" section of the Notice of Determination, amending the reference to Drawings A/01, A/02, A03 & A04 dated 25 September 2007 and drawn by Atelier Haefeli Pty Ltd, to include an additional notation that the proposed additions to the dwelling are not included in the consent and the approval relates only to the approved garage with studio over and inclinator.

(ii) inserting condition 2A as follows:

2A: To the extent of any inconsistency between this consent and the development consent granted to Development Application DA2023/0763 by Northern Beaches Council for alterations and additions at 940 Barrenjoey Road, Palm Beach ("DA2023/0763"), the plans, drawings and documents approved by, and the conditions of, DA2023/0763 shall prevail.

In particular, but without limitation, the alterations and additions to the dwelling within DA2023/0763 supersede the plans and requirements of N0718/07, and must be complied with as requirements of this consent.

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

Reason: To prevent any inconsistencies between consents applying to the site (pursuant to Clause 4.17 of EPA Act, 1979 & Clause 68 EPA Regulation 2021).

20. **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.

21. External Colours and Finishes

The external colours and finishes to the external walls and roof shall have a medium to dark range. Light colours such as off white, cream, silver or light grey colours are not permitted. Any roof with a metallic steel finish is not permitted.

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

Reason: To ensure building colours and materials compliment and enhance the natural landscapes and to ensure that excessive glare or reflectivity nuisance does not occur as a result of the development.

22. Construction Traffic Management Plan

A Construction Traffic Management Plan is to be prepared for the development given its unusual access arrangements.

The Construction Traffic Management Plan shall include (but not be limited to) the following:

- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Details for maintaining access to adjacent properties and properties which benefit from the right of carriageway easement
- Details regarding the proposed method of access to and egress from the site for construction vehicles, and demonstration these vehicle will manoeuvre the right of way safely – i.e enter and leave in a forward direction.
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- Make provision for all construction materials to be stored on site, at all times
- Provision of parking for workers which ensure traffic safety
- Details for loading and unloading of materials
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- The location and operation of any on site crane
- Take into consideration the combined construction activities of other development in the surrounding area.
- Proposed traffic routes, noting that 3 tonne load limits apply to some roads within Pittwater

The Construction Traffic Management Plan shall be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

23. 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) works and tree protection requirements under section 10.2, and Appendix 15.1.

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.

24. Installation and Maintenance of Sediment and Erosion Control

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site

25. Works on Land Owned or Managed By Council

No encroachments are to be carried out on Land owned or managed by Council

Note: Separate approval from Council is required for access driveways, paths, stairs, connections to underground utilities (stormwater, gas, sewer, electricity, telecommunications etc.), and landscaping works on Land owned or managed by Council.

Reason: To protect the land owned or managed by Council.

DURING BUILDING WORK

26. **Protection of Landscape Features 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.

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

Reason: Tree and vegetation protection.

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. **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.

33. **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.

34. **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.

35. **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.

36. **Property Boundary Levels**

The Applicant is to maintain the property boundary levels. No approval is granted for any change to existing property alignment levels to accommodate the development.

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

Reason: To maintain the existing profile of the nature strip/road reserve.

37. **Aboriginal Heritage**

If in undertaking excavations or works any Aboriginal site or object is, or is thought to have

been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Officer for Northern Beaches Council, and the Cultural Heritage Division of the Department of 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.

38. **Storage of Materials on Land Owned or Managed by Council Prohibited**

The dumping or storage of building materials, spoil, vegetation, green waste or any other material in land owned or managed by Council is prohibited.

Reason: Public safety and environmental protection.

39. **Right of Carriageway Access**

Construction vehicles and material are not to impede access for the properties that benefit from the right of way throughout the construction phase. The applicant must provide neighbours who use the right of way with contact details of the contractor in the event that access to the right of way is blocked.

Reason: To ensure access is available to all property owners who benefit from the right of carriageway during the construction phase.

40. **No Access Through Land Owned or Managed by Council**

Site access is not approved for delivery of materials nor construction of the development through adjacent land owned or managed by Council, without the written approval of Council.

Reason: Public safety, landscape amenity and tree protection.

41. **Stockpiling of Topsoil**

During site excavation, topsoil which is to be used in later landscape works is to be stockpiled on site and stabilised during construction works. Stockpiles are to be stored outside of hazard areas and not located within the dripline of existing trees which are to be retained.

Reason: To ensure protection and retention of the Urban Forest/Natural Environment.

42. **Implementation of Construction Management Plan**

All works and construction activities are to be undertaken in accordance with the approved Construction Management Plan. A copy of the approved Construction Management Plan is to be kept onsite at all times and made available to Council on request.

Reason: To ensure compliance of the developer/builder in adhering to the Construction Traffic Management procedures agreed and are held liable to the conditions of consent

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

43. **Condition of Retained Vegetation**

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

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

Reason: Tree and vegetation protection.

44. **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.

45. **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.

46. **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.

47. **Damage to the right of way**

Any damage to the right of way, caused by the construction of the development, is to be repaired prior to the issue of the occupation certificate.

Reason: To ensure the site is left in an acceptable state and that access is maintained for adjoining neighbours.

48. **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.

49. **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

50. **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.

51. **Lift noise control**

The passenger lift must be installed and operated at times so as not to cause 'offensive noise'. It must be demonstrated that the noise level will not exceed 5dBA above background noise when measured from the nearest property boundary, as defined by the Protection of the Environments Operation Act 1997.

Reason: To ensure compliance with legislation and to protect the acoustic amenity of neighbouring properties.

52. **Use of "lower ground floor"**

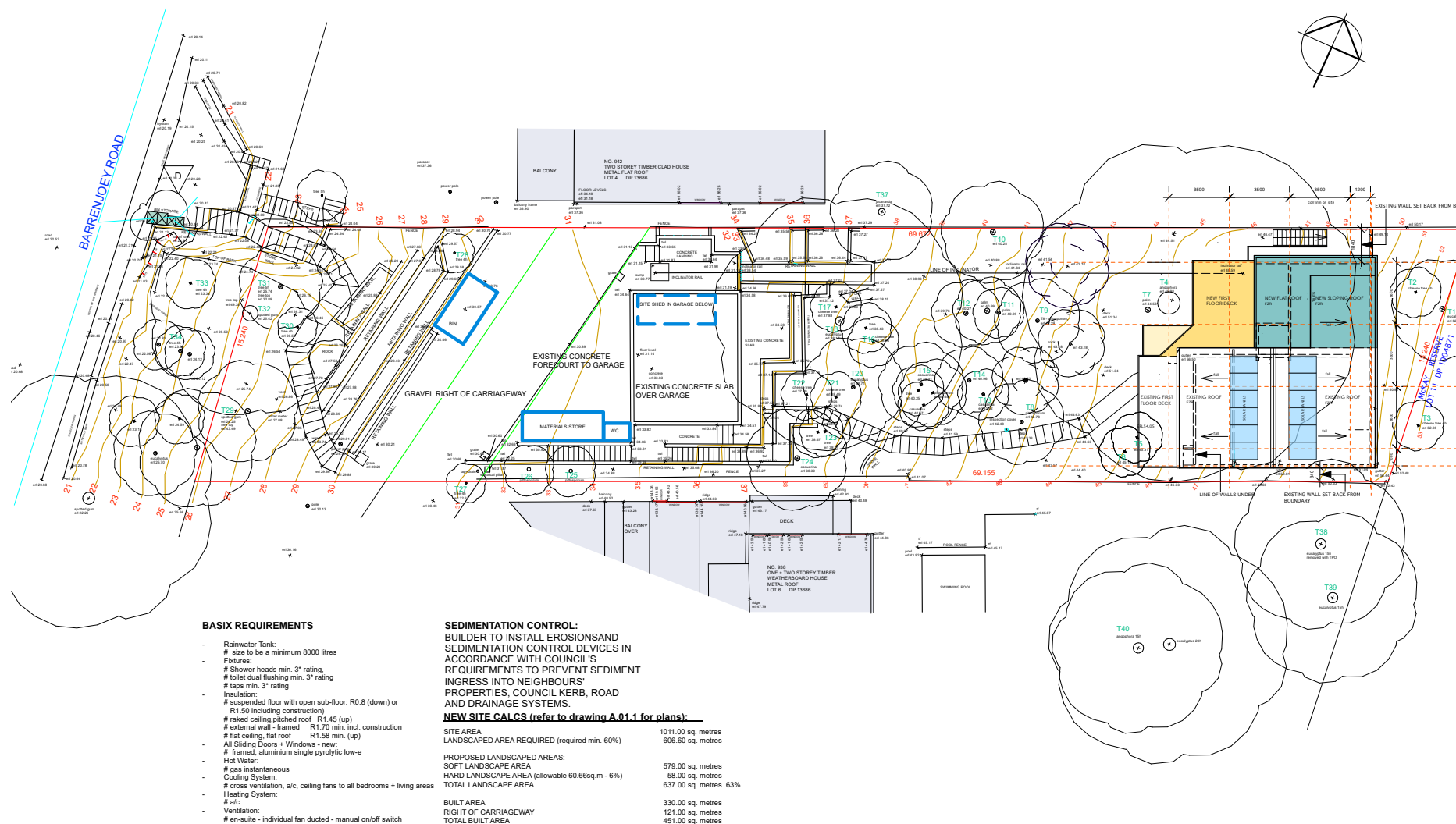
The proposed "lower ground floor" is not to be used for the purpose of separate habitation (including a secondary dwelling or dual occupancy) and is not to contain any cooking facilities.

Reason: To ensure that the lower ground floor remains ancillary to the dwelling house.

53. **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.



REVISIONS:

Revision	Date	Description
D.	26.06.23	HOUSEHOLD BIN LOCATION REVISED
C.	07.06.23	ISSUE FOR DA
B.	13.04.23	ISSUE TO CONSULTANTS - REDUCED HOUSE AREAS
A.	07.03.23	ISSUE TO CONSULTANTS

atelier haefeli ARCHITECTS

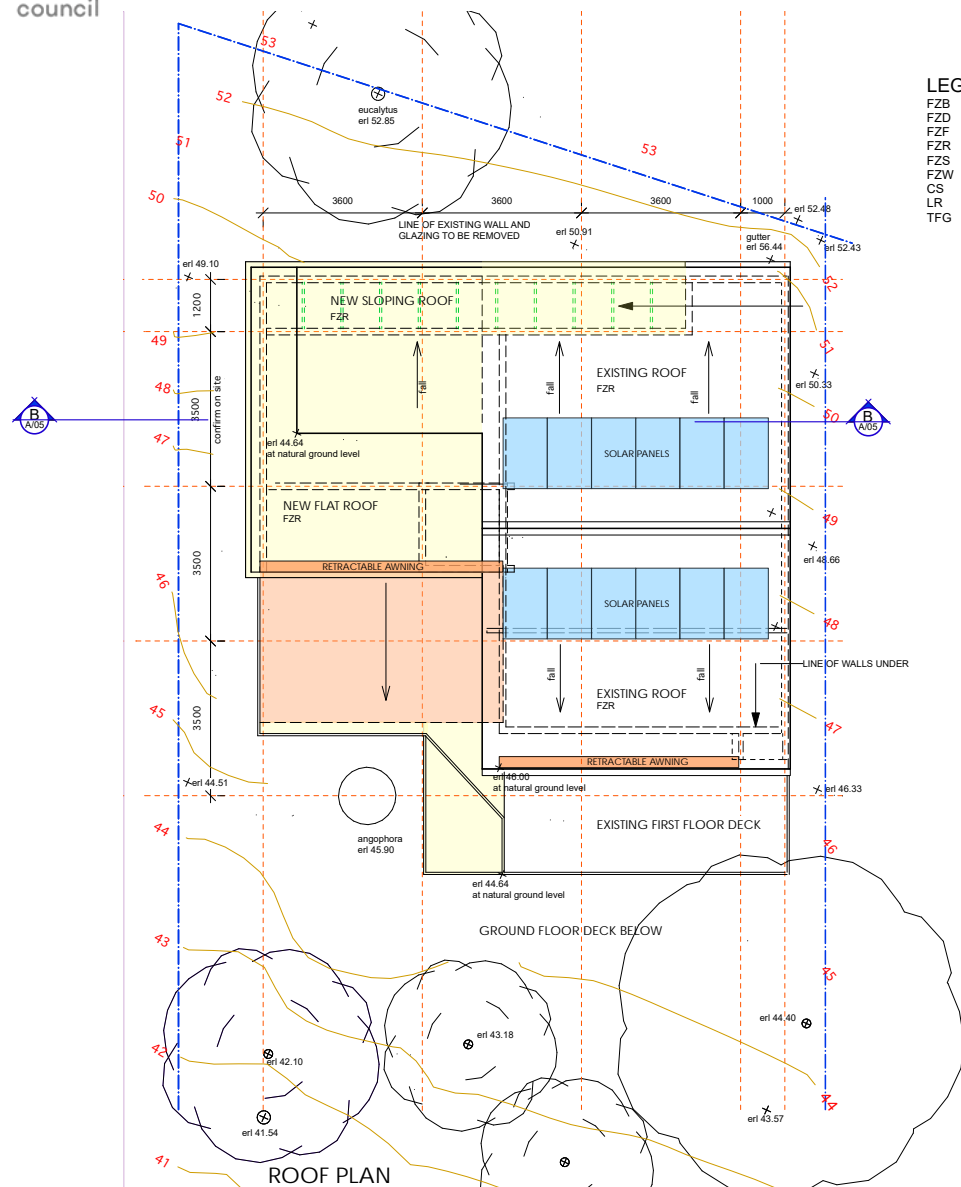
15 Loquat Valley Road, Bayview, NSW, 2104 nom. architect: Linda Haefeli AIA 14430
t 9979 9280 m 0409 815 119 e: linda@atelierhaefeli.com.au

PROPOSED ALTERATIONS + ADDITIONS TO
940 BARRENJOEY ROAD, PALM BEACH
FOR MR. AND MRS. LEEDER-KEMP

SITE + ROOF PLANS

PROJECT NO. 2102
DATE march '23
SCALE 1:100@A3

A.01
D



REVISIONS:	C. 07.06.23	ISSUE FOR DA
	B. 13.04.23	ISSUE TO CONSULTANTS - REDUCED HOUSE AREAS
	A. 07.03.23	ISSUE TO CONSULTANTS

atelier haefeli ARCHITECTS

15 Loquat Valley Road, Bayview, NSW, 2104 nom. architect: Linda Haefeli AIA 14430
t: 9979 9280 m: 0409 815 119 e: linda@atelierhaefeli.com.au

PROPOSED ALTERATIONS + ADDITIONS TO
940 BARRENJOEY ROAD, PALM BEACH
FOR MR. AND MRS. LEEDER-KEMP

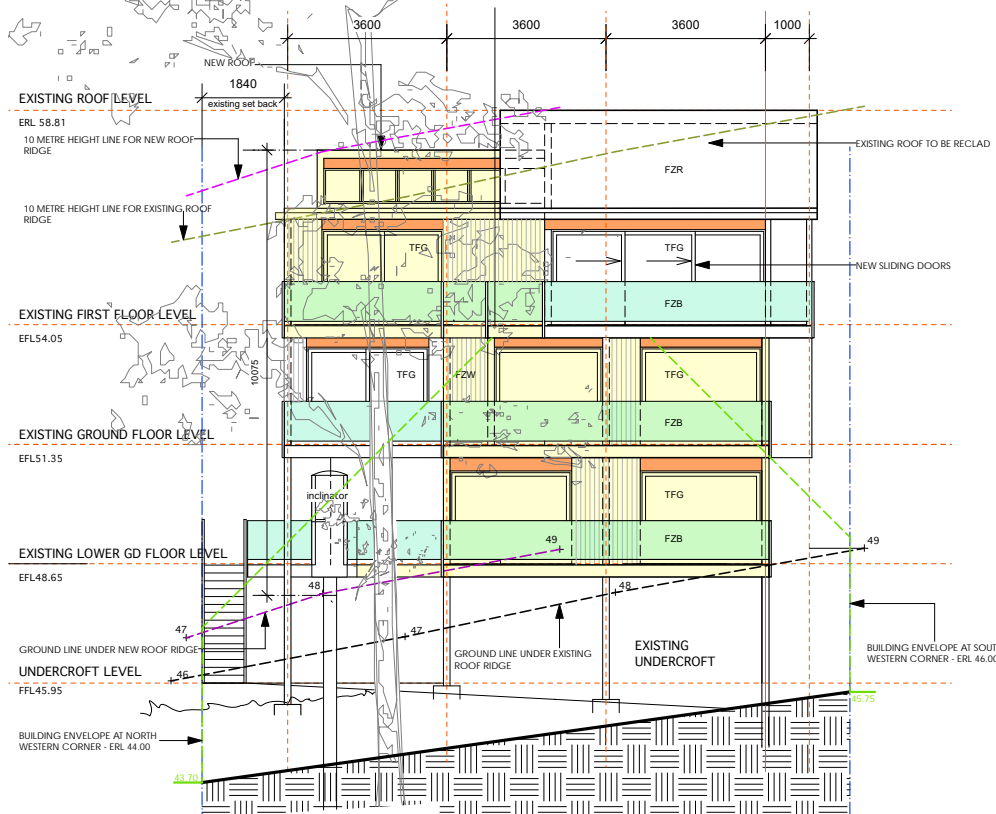
ROOF PLAN + EAST ELEVATION

PROJECT NO. 2102
DATE march '23
SCALE 1:100@A3

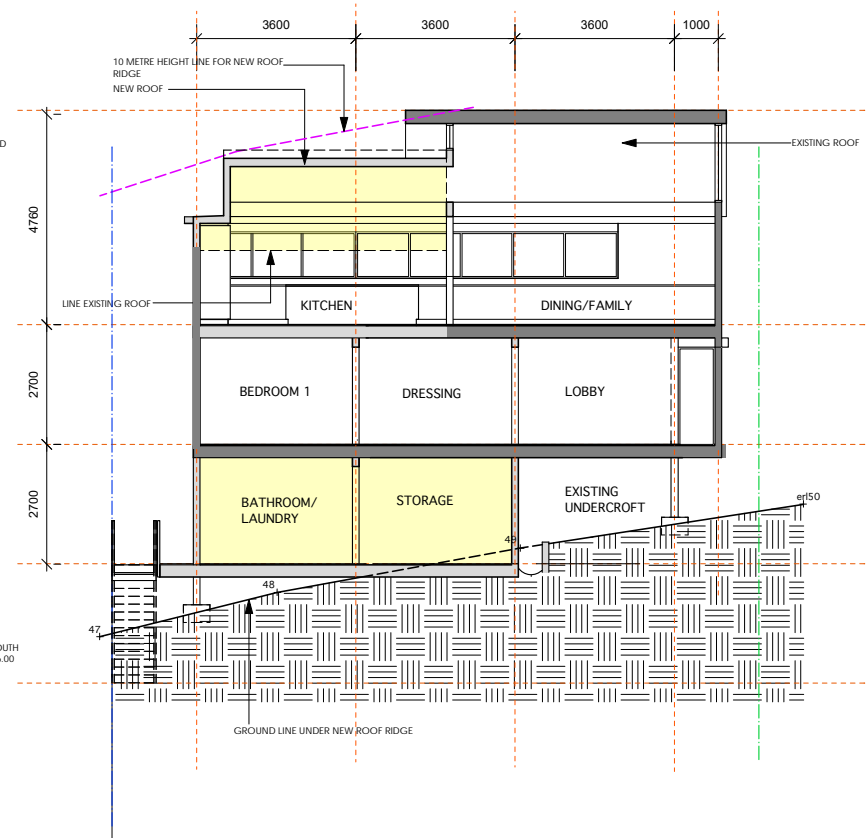
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C

LEGEND:

FZB	FZ BALUSTRADE TO BCA REQUIREMENTS
FZD	FZ DECK
FZF	FIRE SHUTTERS
FZR	METAL ROOFING
FZS	FZ SCREEN
FZW	FZ WALL EXTERNAL WALL CLADDING
CS	CONCRETE SLAB
LR	VERTICAL LOUVRE RIVACVY SCREEN
TFG	ALUMINIUM FRAMED GLAZING



WEST ELEVATION



SECTION BB

C. 07.06.23	ISSUE FOR DA
B. 13.04.23	ISSUE TO CONSULTANTS - REDUCED HOUSE AREAS
A. 07.03.23	ISSUE TO CONSULTANTS

LEGEND:

FZB	FZ BALUSTRADE TO BCA REQUIREMENTS
FZD	FZ DECK
FZF	FIRE SHUTTERS
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REVISIONS:

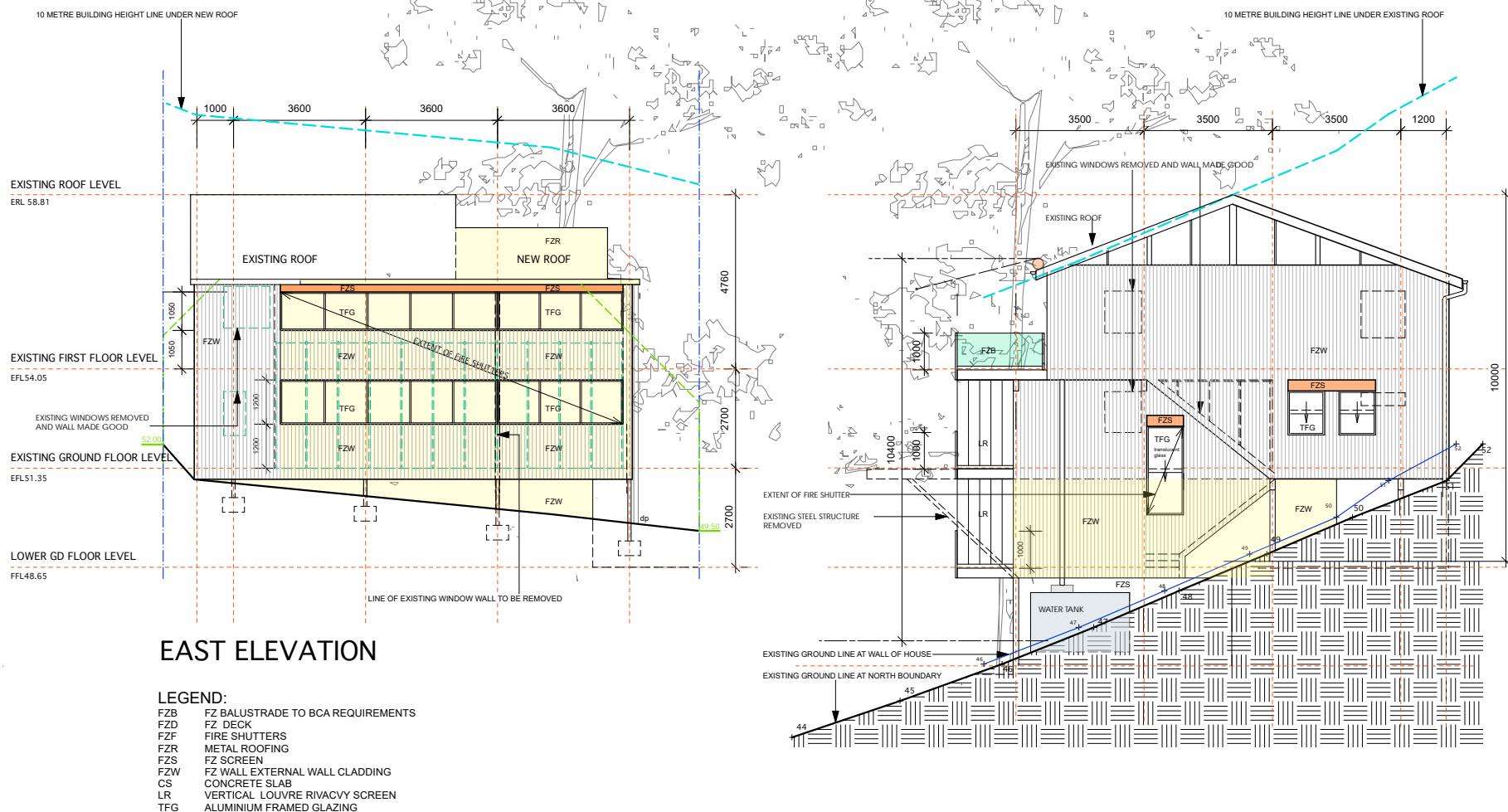
C. 07.06.23	ISSUE FOR DA
B. 13.04.23	ISSUE TO CONSULTANTS - REDUCED HOUSE AREAS
A. 07.03.23	ISSUE TO CONSULTANTS

PROPOSED ALTERATIONS + ADDITIONS TO
940 BARRENJOEY ROAD, PALM BEACH
FOR MR. AND MRS. LEEDER-KEMP

NORTH ELEVATION + SECTION AA

PROJECT NO. 2102
DATE march '23
SCALE 1:100@A3

A.06
C



atelier haefeli ARCHITECTS

15 Loquat Valley Road, Bayview, NSW, 2104 nom. architect: Linda Haefeli AIA 14430
t 9979 9280 m: 0409 815 119 e: linda@atelierhaefeli.com.au

PROPOSED ALTERATIONS + ADDITIONS TO
940 BARRENJOEY ROAD, PALM BEACH
FOR MR. AND MRS. LEEDER-KEMP

REVISIONS: B. 07.06.23 ISSUE FOR DA
A. 13.04.23 ISSUE TO CONSULTANTS - REDUCED HOUSE AREAS

EAST + SOUTH ELEVATIONS

PROJECT NO. 2102
DATE march '23
SCALE 1:100@A3

A.07
B

Vaughan Milligan Development Consulting Pty Ltd

APPENDIX
CLAUSE 4.6 – MAXIMUM BUILDING HEIGHT

Vaughan Milligan Development Consulting Pty Ltd

**WRITTEN REQUEST PURSUANT TO CLAUSE 4.6 OF
PITTWATER LOCAL ENVIRONMENTAL PLAN 2014**

**940 BARRENJOEY ROAD, PALM BEACH
FOR PROPOSED ALTERATIONS & ADDITIONS TO AN EXISTING DWELLING**

**VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MAXIMUM BUILDING HEIGHT
CONTROL AS DETAILED IN CLAUSE 4.3 OF THE PITTWATER LOCAL ENVIRONMENTAL PLAN 2014**

For: Proposed alterations and additions to an existing dwelling
At: 940 Barrenjoey Road, Palm Beach
Owner: Damon Leeder &
Applicant: Damon Leeder &

1.0 Introduction

This written request is made pursuant to the provisions of Clause 4.6 of Pittwater Local Environmental Plan 2014. In this regard it is requested Council support a variation with respect to compliance with the maximum building height as described in Clause 4.3 of the Pittwater Local Environmental Plan 2014 (PLEP 2014).

2.0 Background

Clause 4.3 restricts the building height of a building within this area of the Pittwater locality and refers to the maximum height noted within the "*Height of Buildings Map*."

Clause 4.3 restricts the building height of a building within this area of Palm Beach locality to a maximum height of 8.5m.

Due to the sloping topography of the site and the siting of the existing development, the proposed northern extremity of the new retractable roof awning over the western portion of the existing deck at the first floor level will be up to 11.1m in height, measured above the natural ground level, and exceeds the building height standard by up to 2.6m or 30.5%.

The extent of the breach of the building height control is directly related to the significant slope of the site and the form of the existing, elevated dwelling which sits above the existing ground and was constructed in an elevated form to minimise disturbance to the site.

The figure over notes the variation to the maximum height control, which occurs as a direct consequence of the site's steep & falling levels towards the north-western corner of the site, with the slope of the site approximately 42% through the building area.

The proposed works will see the retention of the existing ground and first floor levels and the existing maximum ridge height of the dwelling at RL 58.51.

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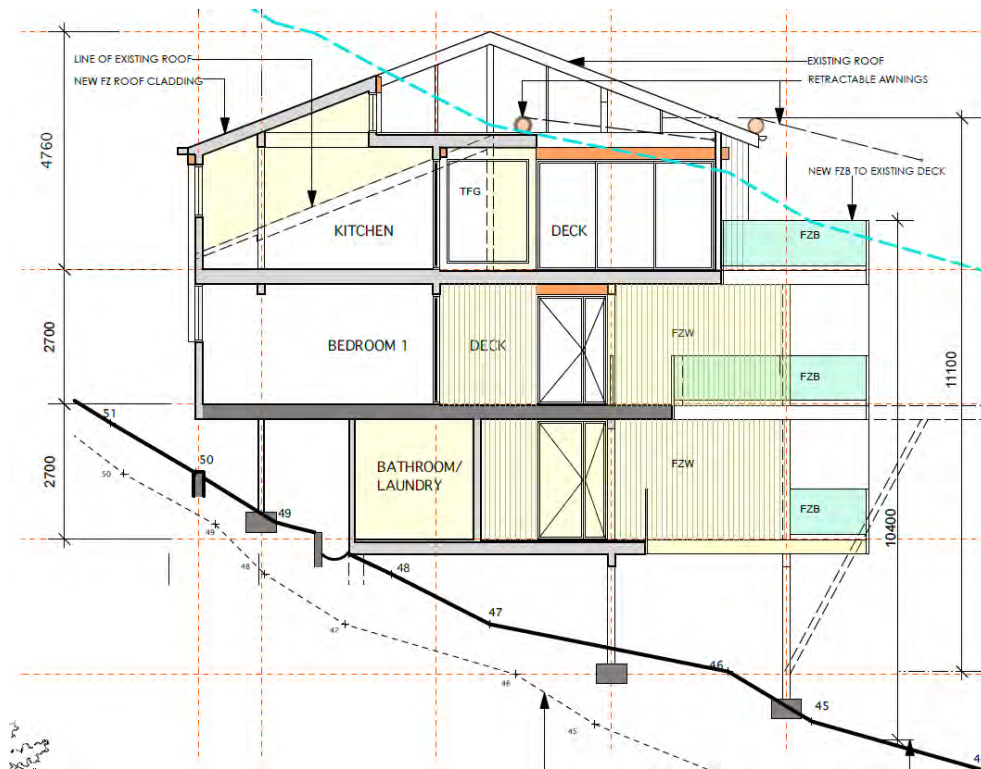


Fig 1: Building section indicating proposed retractable roof awning and which demonstrates extent of variation to statutory height limit when assessed against the existing ground line through the site

The proposal is considered acceptable and there are sufficient environmental planning grounds to justify contravening the development standard.

The controls of Clause 4.3 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

Is Clause 4.3 of the LEP a development standard?

- (a) The definition of “development standard” in clause 1.4 of the EP&A Act means standards fixed in respect of an aspect of a development and includes:

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

- (b) Clause 4.3 relates to the maximum height of a building. Accordingly, Clause 4.3 is a development standard.

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3.0 Purpose of Clause 4.6

The Pittwater Local Environmental Plan 2014 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the Standard Instrument should be assessed. These cases are taken into consideration in this request for variation.

In particular, the principles identified by Preston CJ in *Initial Action Pty Ltd vs Woollahra Municipal Council* [2018] NSWLEC 118 have been relied on in this request for a variation to the development standard.

4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

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

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

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

“In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”. 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.

Vaughan Milligan Development Consulting Pty Ltd

Clause 4.6(2) of the LEP provides:

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

Clause 4.3 (the Maximum Building Height Control) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of the LEP.

Clause 4.6(3) of the LEP provides:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

The proposed development does not comply with the maximum building height development standard pursuant to Clause 4.3 of PLEP which specifies a maximum building height of 8.5m in this area of Palm Beach. The proposed additions and alterations to the existing elevated dwelling result in a portion of the new retractable awning at the roof level, on the north-western side of the first floor level deck being up to 11.1m in height above the existing ground levels of the land and exceeds the building height standard by 2.6m or 30.5%.

Strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Clause 4.6(4) of PLEP provides:

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) the consent authority is satisfied that:*
- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Planning Secretary has been obtained.*

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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 Planning Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 55 of the *Environmental Planning and Assessment Regulation 2021*, the Secretary has given written notice dated 5 May 2020, attached to the Planning Circular PS 20-002 issued on 5 May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of the LEP provides:

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

Council has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), and should consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

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

The specific objectives of Clause 4.6 are as follows:

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

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The development will achieve a better outcome in this instance as the site will provide additions and alterations to the existing dwelling, which is consistent with the stated Objectives of the C4 Environmental Living Zone, which are noted as:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To provide for residential development of a low density and scale integrated with the landform and landscape.*
- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

The non-compliance with the building height control arises as a result of the sloping topography of the site as the site levels fall towards the west and north-west and the location and the form of the existing dwelling, notwithstanding that the proposal seeks to provide for additions and alterations to the existing dwelling and which do not increase the existing overall height of the dwelling.

The proposal seeks to provide for additions and alterations to the existing building which maintain a bulk and scale which is in keeping with the extent of surrounding development and with a consistent palette of materials and finishes which will provide for high quality development that will enhance and complement the locality.

Notwithstanding the non-compliance with the maximum building height control, the new works will provide an attractive residential development that will add positively to the character and function of the local residential neighbourhood.

It is noted that the proposal will maintain a consistent character with the built form of nearby properties, with the new roof form intended to complement the existing roofing and the dwelling will maintain the existing overall ridge height. The proposed new works utilise the existing building undercroft and add additional floor areas in a manner which does not significantly increase the building bulk.

The proposed new works will not see any unreasonable impacts on the existing views enjoyed by neighbouring properties, which are largely forward and down slope of the existing building, which has been constructed at the rear of the site. To the rear of the site is McKay Reserve and therefore the proposed new works do not unreasonably affect views for surrounding properties.

The works are designed to ensure that there will not see any unreasonable adverse impacts on the solar access enjoyed by adjoining dwellings.

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5.0 The Nature and Extent of the Variation

- 5.1 This request seeks a variation to the maximum building height standard contained in Clause 4.3 of PLEP.
- 5.2 Clause 4.3 of PLEP specifies a maximum building height of 8.5m in this area of Pittwater.
- 5.3 The proposed additions and alterations to the existing dwelling and in particular the new retractable roof awnings over the western side of the existing first floor level deck will have a building height of 11.1m when measured above the existing ground level. The works will exceed the building height control by 2.6m or 30.5% at the north-western extremity of the retractable roof awning over the existing first floor level deck.

6.0 Relevant Caselaw

- 6.1 In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular, the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827* continue to apply as follows:
 17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
 18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
 19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
 20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
 21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be*

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unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.

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

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

1. Is Clause 4.3 of PLEP a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
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 C4 zone?
4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes Clause 4.3 of PLEP?

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7.0. Request for Variation

7.1 Is compliance with Clause 4.3 unreasonable or unnecessary?

- (a) This request relies upon the 1st way identified by Preston CJ in *Wehbe*.
- (b) The first way in *Wehbe* is to establish that the objectives of the standard are achieved.
- (c) Each objective of the maximum building height standard, as outlined under Clause 4.3, and reasoning why compliance is unreasonable or unnecessary, is set out below:

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

The surrounding area is predominantly characterised by development between one and three storeys.

The proposal provides for a development which follows the siting of existing dwelling and maintains a compatible building form, which is in keeping with the desired future character of the locality. The dwelling is in keeping with the extent of newer development in the locality. The overall height of the existing building will be unchanged and given the elevated nature of the dwelling, and the significant site slope of 42%, these factors combine to result in the non-compliance with the height control.

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

The proposed development maintains consistency with the height and scale of other elevated development in the area, which is encouraged by Council's controls to limit site disturbance and stepped to follow the sloping topography.

The maximum height of the new retractable roof awning is up to 11.1m with the awning placed slightly above the existing gutter level to the western extremity of the first floor level roof. The existing overall height of the main ridge of the dwelling is unaltered.

Whilst compliance with the height control is constrained by the sloping topography of the site and location of existing development, the development is considered appropriate and compatible within the locality and is therefore worthy of support.

(c) to minimise any overshadowing of neighbouring properties,

The proposal is accompanied by shadow diagrams which demonstrate that the proposal will not result in a substantial reduction in the solar access currently received by the internal and external living areas of the adjoining neighbour, which are largely located to the west of the existing built footprint and further downslope. The site is bounded by public reserve to the east.

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The adjoining properties will maintain suitable solar access throughout the day in accordance with Council's provisions.

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

The subject and adjoining properties enjoy views to the west towards Pittwater. Given the location of the dwelling at the upper end of the site, views for the surrounding properties are preserved.

The proposal will not result in an unreasonable loss of views from nearby public land.

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

The external form of the dwelling has been stepped to follow the sloping topography of the site, which assists with minimising the visual impact of the development.

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

The proposed development maintains a bulk, scale and character which is in keeping with that of existing surrounding development. The external finishes of the new works comprise earthy tones, which will effectively integrate with the landscaped character of the locality and will not be visually prominent. The proposal will not require the removal of any significant vegetation.

The proposal is not considered to detract from the significance of the nearby heritage items, and will not adversely impact the natural environment within the locality.

7.2 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*

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

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

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposed development will maintain the general bulk and scale of the existing surrounding development and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).
- Similarly, the proposed development will provide for improved amenity within a built form which is compatible with the streetscape of Barrenjoey Road which also promotes the orderly and economic use of the land (cl 1.3(c)).
- The proposed additions alterations to the existing dwelling are considered to promote good design and enhance the residential amenity of the buildings' occupants and the immediate area, which is consistent with the Objective 1.3 (g).
- The proposed development improves the amenity of the occupants and respects surrounding properties through the inclusion of the proposed retractable awning to allow for improved light and solar access and breezes, by locating the development where it will not unreasonably obstruct views across the site and will maintain the views from the site (1.3(g)).
- The proposed retractable awning will provide for good solar protection for the building occupants when utilising their existing decks. Given the significant slope of the land, the decks provide the primary opportunity for outdoor recreation space and passive sitting and entertaining areas. Being inclusion of the retractable awning will assist in providing for solar protection for the owners when utilising the deck, which is consistent with the Objective (1.3(h)).

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of a building that provides sufficient floor area for future occupants and manages the bulk and scale and maintains views over and past the building from the public and private domain. These are not simply benefits of the development as a whole, but are benefits emanating from breach of the maximum building height control.

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It is noted that in *Initial Action*, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

7.3 Is the proposed development in the public interest because it is consistent with the objectives of Clause 4.3 and the objectives of the C4 Environmental Living Zone?

- (a) Section 4.2 of this written request suggests the 1st test in *Wehbe* is made good by the development.
- (b) Each of the objectives of the C4 Environmental Living Zone and the reasons why the proposed development is consistent with each objective is set out below.

I have had regard for the principles established by Preston CJ in *Nessdee Pty Limited v Orange City Council [2017] NSWLEC 158* where it was found at paragraph 18 that the first objective of the zone established the range of principal values to be considered in the zone.

Preston CJ also found that "*The second objective is declaratory: the limited range of development that is permitted without or with consent in the Land Use Table is taken to be development that does not have an adverse effect on the values, including the aesthetic values, of the area. That is to say, the limited range of development specified is not inherently incompatible with the objectives of the zone*".

In response to *Nessdee*, I have provided the following review of the zone objectives:

It is considered that notwithstanding the variation of to the building height control, the proposal which involves additions and alterations to the existing building will be consistent with the individual Objectives of the C4 Environmental Living Zone for the following reasons (over):

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

The proposed additions & alterations to the existing dwelling are consistent with the single dwelling character of the locality. The proposal will not require the removal of any significant vegetation, and maintains a suitable area of soft landscaping.

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

The proposed development will not detract from the ecological or aesthetic values within the locality.

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

The built form of the development is stepped to follow the sloping topography of the site, and is therefore effectively integrated into the landform. The bulk and scale of the dwelling is in keeping with that of newer development in the locality.

The proposal will not require the removal of any significant vegetation, and will maintain a generous area of soft landscaping.

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

The site is not within the immediate vicinity of riparian land or wildlife corridors.

7.4 Has council obtained the concurrence of the Director-General?

The Council can assume the concurrence of the Director-General with regards to this clause 4.6 variation.

7.5 Has the Council considered the matters in clause 4.6(5) of PLEP?

- (a) The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed alterations and additions to the dwelling house for the particular site and this design is not readily transferrable to any other site in the immediate locality, wider region of the State and the scale or nature of the proposed development does not trigger requirements for a higher level of assessment.
- (b) As the proposed development is in the public interest because it complies with the objectives of the development standard and the objectives of the zone there is no significant public benefit in maintaining the development standard.

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- (c) there are no other matters required to be taken into account by the secretary before granting concurrence.

8.0 Conclusion

This development proposes a departure from the maximum building height development standard, with the proposed new retractable roof awning over the western extremity of the existing first floor level deck being up to 11.1m when measured above the existing ground level.

This variation occurs as a direct consequence of the significant slope of the site through the building area which is up to 42% and the form of the existing dwelling which was built as an elevated multilevel dwelling above ground level to minimise disturbance to the to the land.

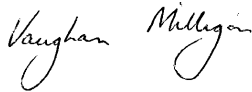
The extent of the variation to the building height control is minimised by the low profile roof form, and the area of non-compliance does not result in any significant impact for the views and outlook for the neighbouring properties.

Notwithstanding the non-compliance introduced through the inclusion of the new roof awnings, the existing maximum ridge level of the dwelling and the floor levels of the upper living levels remain unchanged.

This written request to vary to the maximum building height standard specified in Clause 4.3 of the Pittwater LEP 2014 adequately demonstrates that that the objectives of the standard will be met.

The bulk and scale of the proposed development is appropriate for the site and locality.

Strict compliance with the maximum building height control would be unreasonable and unnecessary in the circumstances of this case.



VAUGHAN MILLIGAN
Town Planner

ITEM 3.8

**DA2023/0718 - 1825 PITTWATER ROAD BAYVIEW -
RENOVATION OF ELEVEN (11) OF THE EXISTING GOLF
COURSE GREENS, CONSTRUCTION OF ONE (1) NEW GREEN
AND REMOVAL OF TREES**

REPORTING MANAGER **Steve Findlay**

TRIM FILE REF **2023/749151**

ATTACHMENTS

1 [↓ Assessment Report](#)

2 [↓ Site Plans](#)

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to DA2023/0718 for renovation of eleven (11) of the existing golf course greens, construction of one (1) new green and removal of trees on land at Lot 1 DP 662920, Lot 1 DP 19161, Lot 5, 6 & 7 DP 45114, 52 Cabbage Tree Road BAYVIEW & Lot A DP 339874, Lot 1, 2 & 3 DP 986894, Lot 150 DP 1003518, Lot 191 DP 1039481, Lot 300 DP 1139238, 1825 Pittwater Road BAYVIEW, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0718
Responsible Officer:	Nick Keeler
Land to be developed (Address):	Lot 1 DP 662920, 52 Cabbage Tree Road BAYVIEW NSW 2104 Lot 1 DP 19161, 52 Cabbage Tree Road BAYVIEW NSW 2104 Lot 5 DP 45114, 52 Cabbage Tree Road BAYVIEW NSW 2104 Lot 7 DP 45114, 52 Cabbage Tree Road BAYVIEW NSW 2104 Lot 6 DP 45114, 52 Cabbage Tree Road BAYVIEW NSW 2104 Lot A DP 339874, 1825 Pittwater Road BAYVIEW NSW 2104 Lot 1 DP 986894, 1825 Pittwater Road BAYVIEW NSW 2104 Lot 2 DP 986894, 1825 Pittwater Road BAYVIEW NSW 2104 Lot 3 DP 986894, 1825 Pittwater Road BAYVIEW NSW 2104 Lot 150 DP 1003518, 1825 Pittwater Road BAYVIEW NSW 2104 Lot 191 DP 1039481, 1825 Pittwater Road BAYVIEW NSW 2104 Lot 300 DP 1139238, 1825 Pittwater Road BAYVIEW NSW 2104
Proposed Development:	Renovation of eleven (11) of the existing golf course greens, construction of one (1) new green and removal of trees
Zoning:	RE2 Private Recreation
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Bayview Golf Club Ltd
Applicant:	Vaughan Patrick Milligan
Application Lodged:	13/06/2023
Integrated Development:	Yes
Designated Development:	No

State Reporting Category:	Commercial/Retail/Office
Notified:	01/08/2023 to 29/08/2023
Advertised:	01/08/2023
Submissions Received:	84
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 891,000.00
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EXECUTIVE SUMMARY

This development application seeks consent for renovation of eleven (11) of the existing golf course greens, construction of one (1) new green and removal of trees.

The application is referred to the Development Determination Panel (DDP) due to the receipt of five (5) submissions by way of objection. A total of 84 submissions were received with the remainder in support of the proposal.

Concerns raised in the objections predominantly relate to removal of trees and the development's impact on local biodiversity, floodplain and coastal wetlands and potential soil contamination on the site.

Critical assessment issues included ensuring the development will not unreasonably impact upon the flood characteristics of the land or disturb potential contaminated soils.

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

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for the renovation of eleven (11) of the existing golf course greens complexes and construction of one (1) new green complex including removal of 23 trees at Bayview Golf Club.

The proposal does not involve any major building works and does not involve any change to membership numbers or current operation of Bayview Golf Club and other facilities on the site.

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

SITE DESCRIPTION

Property Description:	<p>Lot 1 DP 662920 , 52 Cabbage Tree Road BAYVIEW NSW 2104</p> <p>Lot 1 DP 19161 , 52 Cabbage Tree Road BAYVIEW NSW 2104</p> <p>Lot 5 DP 45114 , 52 Cabbage Tree Road BAYVIEW NSW 2104</p> <p>Lot 7 DP 45114 , 52 Cabbage Tree Road BAYVIEW NSW 2104</p> <p>Lot 6 DP 45114 , 52 Cabbage Tree Road BAYVIEW NSW 2104</p> <p>Lot A DP 339874 , 1825 Pittwater Road BAYVIEW NSW 2104</p> <p>Lot 1 DP 986894 , 1825 Pittwater Road BAYVIEW NSW 2104</p> <p>Lot 2 DP 986894 , 1825 Pittwater Road BAYVIEW NSW 2104</p> <p>Lot 3 DP 986894 , 1825 Pittwater Road BAYVIEW NSW 2104</p> <p>Lot 150 DP 1003518 , 1825 Pittwater Road BAYVIEW NSW 2104</p> <p>Lot 191 DP 1039481 , 1825 Pittwater Road BAYVIEW NSW 2104</p> <p>Lot 300 DP 1139238 , 1825 Pittwater Road BAYVIEW NSW 2104</p>
Detailed Site Description:	<p>The subject site consists of twelve (12) allotments collectively known as 1825 Pittwater Road, Bayview and 52 Cabbage Tree Road, Bayview.</p> <p>The site is currently occupied by Bayview Golf Course ('the site') is located at the southern end of Pittwater Waterway. The site is split into two portions divided by Cabbage Tree Road, bordered by Cabbage Tree Road, Pittwater Road, Darley Street West, and Parkland Road. A large watercourse is located on the north-eastern corner of the site.</p>

	<p>The overall site comprises an area of approximately 367,725m² (36.8ha). It is irregular in shape, and is predominantly used for the purposes of fairways and greens associated with the golf club building. The clubhouse is located on Lot 300 in DP1139238, directly adjoining and accessed from Pittwater Road. The site is located within the RE2 Private Recreation zone.</p> <p>There is a principal water course running through the course known in Council records as Cahill Creek, which discharges into Winnererremy Bay. The site contains a large number of canopy trees and vegetation. The site contains Swamp Oak Floodplain Forest EEC and Swamp Sclerophyll Forest EEC.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>The site (beyond the golf course boundary) is characterised by predominantly single and two storey dwelling houses, as well as a number of seniors housing sites that are located in proximity to the site.</p>
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Map:



SITE HISTORY

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

Application **N0460/06** for Construction of a new Club House was approved on 07/12/2006 by Council staff.

Application **N0751/10** for Alterations and additions to existing maintenance facility to golf club was

approved on 04/05/2011 by Council staff.

Application **DA2017/1274** for Construction of Seniors Housing consisting of 95 units including golf course upgrades and infrastructure works was refused on 08/08/2018 by the Sydney North Planning Panel.

Application **DA2021/1338** for Construction of water harvesting and sub-surface drainage of golf course fairways was approved on 07/06/2022 by Council staff.

APPLICATION HISTORY

The application was originally notified and advertised between 21 June 2023 to 19 July 2023. Due to an error identified in the original notification and advertisement, the application was notified and advertised for a second period between 1 August 2023 to 29 August 2023.

On 26 July 2023, Council issues a Request for Further Information regarding issues relating to flooding and contaminated lands including the requirement to provide a revised flood report and a soil contamination investigation report. These reports were submitted by the applicant in September 2023.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider “Prescribed conditions” of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to a revised flood report and soil contamination report.</p>

Section 4.15 Matters for Consideration	Comments
	<p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the

specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

The proposed development does not involve the construction of any structure or building. As such, Council is satisfied that the provisions of section 4.14 are adequately addressed.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 01/08/2023 to 29/08/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 84 submission/s from:

Name:	Address:
Mr John Graham Peterson	21 Annam Road BAYVIEW NSW 2104
Ian Brian Penfold	9 Robert Street FRESHWATER NSW 2096
Ian McDonald	Address Unknown
Mr William Anderson	25 Kirkpatrick Street NORTH TURRAMURRA NSW 2074
Mr David Anthony Edward Ley	34 Eastview Road CHURCH POINT NSW 2105
Jack Verberne	Address Unknown
Wei Guo Shi	20 / 48 Lovett Street MANLY VALE NSW 2093
Mr Simon Geoffrey Clark	270 Hudson Parade CLAREVILLE NSW 2107
Anthony Joseph Carter	58 Irrubel Road NEWPORT NSW 2106
Mr Mark Eamon Osborn	157 Rickard Road NORTH NARRABEEN NSW 2101
Mr Allen James Telling	210 / 102 Darley Street West MONA VALE NSW 2103
Dean Millar	7 McCarrs Creek Road CHURCH POINT NSW 2105
Mr James Ewan McLean	18 Elaine Avenue AVALON BEACH NSW 2107
Angela Hayne	Address Unknown
Sharon Lee Angel	20 Lentara Road BAYVIEW NSW 2104
Mr Elemer Csaba Hunfalvay	3 / 147 - 149 Darley Street West MONA VALE NSW 2103
Peter Chapman	20 Lentara Road BAYVIEW NSW 2104
Mr Kent Gordon Heazlett	82 Prince Alfred Parade NEWPORT NSW 2106
Mr Adam Gaukrodger	747 Barrenjoey Road AVALON BEACH NSW 2107
Mr Damian John Westhoff	13 Patrick Street AVALON BEACH NSW 2107
Mr Lawrence Charles Davidson	15 Eastview Road CHURCH POINT NSW 2105
Geoffrey Charles Jacobs	8 Terrigal Road TERREY HILLS NSW 2084
Mrs Deborah Leone Couldwell	15 Eastview Road CHURCH POINT NSW 2105
Mr Darrell Robert Freeman	41 Elimatta Road MONA VALE NSW 2103
Mrs Elizabeth Mary Kelly	29 Collins Street NORTH NARRABEEN NSW 2101
Chadwick Warriner Barlow	320 / 168 Queenscliff Road QUEENSCLIFF NSW 2096
Mr Phillip Parry Fontaine	14 Ocean Avenue NEWPORT NSW 2106

Name:	Address:
Mr Richard John David	204 / 102 Darley Street West MONA VALE NSW 2103
Mr Robert Cadden	21 Baroona Road CHURCH POINT NSW 2105
Ms Paula Maree Tocquer	17 / 125 Darley Street West MONA VALE NSW 2103
Wayne Hercules Broun	112 Narrabeen Park Parade WARRIEWOOD NSW 2102
Mr Gary Burton Gietz	90 Edgecliffe Boulevarde COLLAROY PLATEAU NSW 2097
Mr Mark Christian Bernardo	6 Binnowee Place BAYVIEW NSW 2104
Mr Mark John Welch	29 Utingu Place BAYVIEW NSW 2104
Mr Colin Euers	21 Eastview Road CHURCH POINT NSW 2105
Mr Nicholas James Smith	2 / 71 Park Street MONA VALE NSW 2103
Mr Steven James Green	1 Seaview Parade BELROSE NSW 2085
Mrs Patricia Jessie Imrie Gillett	27 Southern Cross Way ALLAMBIE HEIGHTS NSW 2100
Mr Christopher John Gillett	27 Southern Cross Way ALLAMBIE HEIGHTS NSW 2100
Mr Stephen James Matthews	15 A Carlton Street FRESHWATER NSW 2096
Mrs Raylee Ann Moylan	10 / 155 Fisher Road North CROMER NSW 2099
Mrs Jacqueline Stone	301 / 102 Darley Street West MONA VALE NSW 2103
Mr Graham Richard Drinkwater	19 Lower Beach Street BALGOWLAH NSW 2093
Jane Anne George	208 / 102 Darley Street West MONA VALE NSW 2103
Paul Millar	306 / 102 Darley Street West MONA VALE NSW 2103
Robyn Maree Pitt	212 / 102 Darley Street West MONA VALE NSW 2103
Mr Gregory Allan Attwood	14 / 125 Darley Street West MONA VALE NSW 2103
Mr David Edward Ineson	133 Powderworks Road ELANORA HEIGHTS NSW 2101
Mr Rupert John Townsend	269 Lower Plateau Road BILGOLA PLATEAU NSW 2107
Mr Niclas Wessblad	7 / 22 Malvern Avenue MANLY NSW 2095
Mrs Anne Hinton	14 Cambage Court DAVIDSON NSW 2085
Mr Adrian Keith Van Gogh	33 Powderworks Road NORTH NARRABEEN NSW 2101
Graham Easy	Address Unknown
Brian Robert Gilbert	9 / 147 - 149 Darley Street West MONA VALE NSW 2103
Mr Glenn Allen Vade	22 Darius Avenue NORTH NARRABEEN NSW 2101
Mr David Maxwell Stewart-Hunter	1 / 30 - 32 Bardo Road NEWPORT NSW 2106
Mrs Joan Hicks	313 / 102 Darley Street West MONA VALE NSW 2103
Mr Christopher Anthony Stephenson	1 / 129 - 131 Darley Street West MONA VALE NSW 2103
Mr Kenneth Walter Fitzpatrick	15 Darius Avenue NORTH NARRABEEN NSW 2101
Mr Craig William Pocklington	41 Grandview Drive NEWPORT NSW 2106
Tonis Normet	23 Sybil Street NEWPORT NSW 2106
Christopher Alfonso	Po Box 320 MONA VALE NSW 1660
Mr Gordon Alden Smith	17 Bassett Street MONA VALE NSW 2103

Name:	Address:
Martin Touw	36 Watkins Road AVALON BEACH NSW 2107
Mr Martin Ian Alfonso	Po Box 320 MONA VALE NSW 1660
Mrs Susanne Claire Davies	2 / 1 Seaview Avenue NEWPORT NSW 2106
Mr Grahame Leo Tate	8 Sybil Street NEWPORT NSW 2106
Adam Gaebel	25 Wollstonecraft Avenue AVALON BEACH NSW 2107
Mr Sean Patrick Connolly	7 Cecil Road NEWPORT NSW 2106
Ms Irene Newport	21 Bilgola Avenue BILGOLA BEACH NSW 2107
Mr Harry Pitkanen	63 Cheryl Crescent NEWPORT NSW 2106
Steven Jordan	Address Unknown
Mr David Keith Baker	6 / 45 - 53 Ocean Avenue NEWPORT NSW 2106
Mr Graham Maxwell Jones	192 Central Road AVALON BEACH NSW 2107
Mrs Dianne Maree Hoschke	6 Canungra Place ELANORA HEIGHTS NSW 2101
Mr Stephen Wykeham Balme	209 / 102 Darley Street West MONA VALE NSW 2103
Mr Tristan Rajah	13 / 1026 - 1028 Pittwater Road COLLAROY NSW 2097
Mr Wayne Jeffrey Charles	42 Queens Parade NEWPORT NSW 2106
Mr Robert James Jackson Stewart	22 Elvina Avenue NEWPORT NSW 2106
Mrs Joanna Edwina Green	205 / 102 Darley Street West MONA VALE NSW 2103
Ms Sandra Virginia Murdock	1 / 19 Annam Road BAYVIEW NSW 2104
Ms Marcia Anne Rackham	122 Elimatta Road MONA VALE NSW 2103
Mrs Virginia McCelland	5 / 2085 Pittwater Road CHURCH POINT NSW 2105
Bayview Residents	Address Unknown

Of the 84 submissions received, 79 are in support of the proposal and five (5) raise objection to the proposal.

The following issues were raised in the objection submissions:

- Tree removal and biodiversity impact
- Impact on floodplain and wetlands
- Soil contamination

The above issues are addressed as follows:

- **Tree removal and biodiversity impact**

The submissions raised concerns that the application proposes the removal of several mature native trees which will result in unacceptable impact to the biodiversity of the locality. Concerns are raised on how Council will monitor the planting and maintenance of replacement trees.

Comment:

To offset the proposed removal of trees, a condition is recommended to require the planting of 40 new native trees on the site. The condition requires the replacement trees to be planted prior to the issue of an occupation certificate and that the trees must be maintained for the life of the development. Where a tree fails, it must be replaced with similar species to maintain the landscape theme and be generally in accordance with the conditions of consent. Non-compliance with the ongoing conditions may result in compliance action being undertaken by Council.

- **Impact on floodplain and wetlands**

The submissions raised concerns that the development will unreasonably impact upon the floodplain and nearby coastal wetlands.

Comment:

The application has been reviewed by Council's Flooding and Coast & Catchments teams who have not raised any objection to the proposal, subject to conditions. As such, it is considered that the proposed development will not cause unreasonable impact upon the floodplain and nearby coastal wetlands.

- **Soil contamination**

The submissions raised concerns that the development is unsuitable due to the potential for disturbance of contaminated soils and the resultant environmental impact.

Comment:

The applicant has submitted a Combined Preliminary and Detailed Site Investigation report to investigate the presence of potentially contaminated soils on the site and whether the proposed development is suitable for the site. The investigation concludes that contamination risk from the proposed development is low and that the site is suitable for the development. The recommendations of the report are included as conditions of consent.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.
Environmental Health (Acid Sulfate)	<p>General Comments</p> <p>Acid Sulfate Soil Assessment Summary (Martens & Associates Pty Ltd P2309440R03V01 – April 2023)</p> <p>A recent ASS assessment was conducted in conjunction with a geotechnical assessment by MA in 2023 (MA, 2023). We note that prior to the most recent assessment, MA completed ASS assessments in 2017 and 2021 for the site to inform proposed site earthworks associated with</p>

Internal Referral Body	Comments
	<p>flood mitigation measure and drainage work. Results from these previous assessments were reviewed and considered (where relevant) in the MA (2023) assessment.</p> <p>Key findings of the MA (2023) assessments are:</p> <ol style="list-style-type: none"> 1. Laboratory analysis indicated 9 of the 13 samples tested are PASS and 6 of the 12 samples have TPA, TSA or SpOs above the Acid Sulfate Soil Manual Advisory Committee (ASSMAC, 1998) action criteria for samples located within Bayview Golf Club. 2. Laboratory results indicated that little to no acid neutralising capacity remained in the soil profile. 3. Suggested liming rates are highly variable ranging from 0.75 to 65 kg / tonne of disturbed soil. 4. Due to the variability of the site, elevations, proposed works and excavation depths, and the variability of laboratory testing results, ASS risk at each green was evaluated individually. 5. It was determined that proposed works at the third green will require a management plan (ASSMP) to address potential ASS risk. 6. Other greens are unlikely to intercept PASS at proposed depth of excavation, and / or have been assessed to have a negligible acid generation risk and low liming rate. If proposed excavation depths are changed, MA should be consulted to confirm new excavation depths to not require further ASS management. <p>An Acid Soils Management Plan has been prepared by Martens & Associates Pty Ltd P2309440R03V01 – April 2023</p>
Environmental Health (Contaminated Lands)	<p>General Comments</p> <p>This application is seeking consent for renovation works to 12 greens at 52 Cabbage Tree Road and 1825 Pittwater Road, Bayview, N</p> <p>The proposed maximum excavation depth is 1.75m below ground level.</p> <p>A combined preliminary and detailed site investigation report has been submitted for this development. The report dated 1 September 2023, prepared by Martens & Associates Pty Ltd has determined the following:</p> <p><i>The investigation area to be suitable for green redevelopment works and no further contamination investigations are required.</i></p> <p>Environmental Health recommends approval subject to conditions.</p>
Environmental Health (Industrial)	<p>General Comments</p> <p>Works proposed in the application include renovation of eleven (11) of the existing golf course greens complexes and construction of one (1) new green complex. Removal of 23 trees and their suitable replacement.</p>

Internal Referral Body	Comments
	Environmental Health considers that normal construction hours conditions-applied by Planning conditions- are appropriate and therefore supports the proposal without additional conditions,
Landscape Officer	<p>The proposal is supported with regard to landscape issues.</p> <p>Council's Landscape Referral section have assessed the application against the Pittwater Local Environment Plan, and the following Pittwater 21 DCP controls (but not limited to):</p> <ul style="list-style-type: none"> • B4.22 Preservation of Trees and Bushland Vegetation • C5.1 Landscaping • D9 Mona Vale Locality <p>The Arboricultural Impact Assessment (AIA) identified 23 trees for removal, of which trees 21, 22, and 23 are exempt by height thus can be removed or managed at the discretion of the applicant without consent. The remaining 20 trees can be supported for removal, and Landscape Referral supports the comments by Council's Bushland and Biodiversity Referral team regarding replacement tree planting. Replacement tree planting locations shall be included on the plans prior to issuing a Construction Certificate, subject to the imposed conditions. A Project Arborist must be engaged to supervise all work in the tree protection zone of trees to be retained. All trees to be retained shall be protected in accordance with the recommendations outlined in the AIA, and the conditions of consent.</p>
NECC (Bushland and Biodiversity)	<p>Council's Biodiversity referrals team have assessed the Development Application for compliance against the following applicable biodiversity related controls:</p> <ul style="list-style-type: none"> • Biodiversity Conservation Act 2016 • State Environmental Planning Policy (Biodiversity and Conservation) 2021 cl. 4.9 Development assessment process —no approved koala plan of management for land • SEPP (Resilience and Hazards) 2021 cl. 2.8 Development on land in proximity to coastal wetlands or littoral rainforest • SEPP (Resilience and Hazards) 2021 cl. 2.10 Development on land within the coastal environment area. • Pittwater LEP cl. 7.6 Biodiversity Protection • Pittwater 21 DCP cl. B4.13 Freshwater Wetlands (non Endangered Ecological Communities) • Pittwater 21 DCP cl. B4.14 Development in the Vicinity of Wetlands <p>The Development Application seeks consent for the renovation of eleven (11) of the existing golf course green complexes and the construction of one (1) new green complex to the existing Bayview Golf Club. The Statement of Environmental Effects (Vaughan Milligan Development Consulting Pty Ltd May 2023), Arboricultural Impact Assessment (Bellevue Tree Consultants, 21 April 2023), and Proposed Course Improvements (Craig Parry Designs 2022) have</p>

Internal Referral Body	Comments
	<p>been reviewed.</p> <p>The Arboricultural Impact Assessment submitted with the application, recommends the removal of 23 trees, 20 of which are prescribed trees, due to their location within proximity to the proposed works. Trees proposed for removal includes six (6) <i>Eucalyptus robusta</i> (Swamp Mahogany) and 13 <i>Casuarina glauca</i> (Swamp Oak) trees. The Arborist has identified that these trees have a range of retention values, including low, medium and high. Native vegetation has been mapped within the subject site, and the trees proposed for removal are either remnant or planted species that are consistent with Swamp Oak Floodplain Forest and Swamp Sclerophyll Forest, both of which are Endangered Ecological Communities listed under the Biodiversity Conservation Act 2016 (BC Act). Swamp Oak Floodplain Forest is also listed as Endangered under the Environment Protection and Biodiversity Conservation Act 1999 (APBC Act).</p> <p>It is noted that works will not occur within the mapped SEPP Coastal Wetland area, however portions of the works are within the land in proximity to coastal wetlands and land within the coastal environment area. The work sites are not within the Biodiversity Values Map area which is used as a trigger for entry into the NSW Biodiversity Offset Scheme. The threatened species test of significance is also used to determine if a development is likely to significantly affect threatened species or ecological communities, or their habitats.</p> <p>A Biodiversity (Flora and Fauna) Report was not submitted with the application, however Council's biodiversity referrals team have reviewed the documentation submitted, and completed a 5-part test to assess the impacts of the development on the local environment including Swamp Oak Floodplain Forest EEC and Swamp Sclerophyll Forest EEC. This assessment concluded that there would be no significant impact on either EEC as a result of the removal of thirteen (13) <i>Casuarina glauca</i> trees and six (6) <i>Eucalyptus robusta</i> from within the subject site. In relation to the Koala Habitat Protection 2021, the development is not likely to have any impact on koalas or koala habitat, therefore a Koala Assessment Report is not required to be prepared by the applicant. Based on the above the Biodiversity Offset Scheme (BOS) is not triggered by the development, and a Biodiversity Development Assessment Report (BDAR) is not required to be submitted</p> <p>In order to mitigate and manage the impacts, replacement planting within the subject site is to be undertaken at a ratio of 2:1 (replaced to lost), and is to be comprised of <i>Casuarina glauca</i>, <i>Eucalyptus robusta</i> or <i>Melealeuca quinquenervia</i> (paperbark) individuals to ensure consistency with existing vegetation within the site.</p> <p>Subject to the recommended conditions of consent, Council's Biodiversity referrals team are satisfied that the proposed development is unlikely to significantly effect the local environment</p>

Internal Referral Body	Comments
	including the coastal wetland, and complies with the above listed legislation and controls.
NECC (Coast and Catchments)	<p>The DA proposes renovation of 11 of the existing golf course greens, construction of one new green and removal of trees at Bayview Golf Club. The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Resilience & Hazards) 2021 and has also been assessed against the coastal relevant requirements of Pittwater LEP 2014 and Pittwater 21 DCP.</p> <p>Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore the Coastal Management Act 2016 is applicable to the proposed development. The proposed development is considered to be consistent with the objects, as set out under Clause 3 of the Coastal Management Act 2016.</p> <p>State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Proximity to Coastal Wetlands Area', 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.9, 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA.</p> <p>Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Vaughan Milligan Development Consulting Pty Ltd. dated May 2023 and also as assessed in the submitted Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd dated 27 April 2023, the DA satisfies requirements under clauses 2.9, 2.10, 2.11 and 2.12 of the SEPP R&H.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021.</p> <p>Estuarine Hazard Management The subject property has also been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3 Estuarine Hazard Controls will apply to any proposed development of the site.</p> <p>An estuarine risk management report prepared by Horton Coastal</p>

Internal Referral Body	Comments
	<p>Engineering Pty Ltd dated 27 April 2023, defines an independently derived estuarine planning level (EPL) for the site of RL 1.71m AHD over a proposed design life of 25 years. The report concludes that for events more severe than about 2% AEP, catchment flooding produces more elevated water levels than the EPL. As the higher level, the FPL and relevant flood controls will therefore prevail and the conditions applied in the Natural Environment Referral Response - Flood for this DA are supported. As such it is considered that the proposed development satisfies the relevant requirements of the Estuarine Risk Management Policy and Estuarine Hazard Controls subject to conditions herein as well as those applied in the Natural Environment Referral Response - Flood.</p>
NECC (Development Engineering)	<p>No objections to the proposed new green and existing green reconfigurations . No conditions are required.</p>
NECC (Flooding)	<p>The proposed development seeks consent for the renovation of eleven of the existing golf course greens and construction of one new golf course green.</p> <p>The site is affected by the low, medium and high flood risk precincts. Seven of the proposed greens (1,2,3,8,10,12,13) are affected by the 1% AEP flood extent.</p> <p>The Flood Risk Management Report prepared by Pittwater Data Services Pty Ltd (Dated 11/09/2023) and associated flood impact assessment prepared by BMT commercial Australia Pty Ltd has adequately demonstrated that the proposal is not expected to adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties.</p> <p>Subject to the following conditions, council is satisfied that the proposal is generally compliant with Section B3.11 and B3.12 of the Pittwater 21 DCP 2021 and Clause 5.21(2)(a-e) of the Pittwater LEP 2014, with consideration of Clause 5.21(3)(a-d) of the Pittwater LEP 2014</p>
NECC (Riparian Lands and Creeks)	<p>Supported.</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • State Environmental Planning Policy (Resilience and Hazards) 2021; • Relevant LEP and DCP clauses; • Northern Beaches Water Management for Development Policy. <p>The application has been assessed in consideration of the above noting that consent also has to be gained from NSW Department of Planning, Industry and Environment – Water under a controlled activity permit (approval is required under the provisions of the Water Management Act 2000).</p> <p>The proposal seeks consent for the renovation of golf course greens, construction of a new green, and removal and replacement of trees.</p>

Internal Referral Body	Comments
	<p>The site is in a floodplain area that drains to Pittwater estuary, and so must not significantly impact on the biophysical, hydrological or ecological integrity of the floodplain or Pittwater estuary, or on the quantity and quality of surface and ground water flows that these areas receive.</p> <p>The documentation submitted for the project is considered satisfactory and the project impacts acceptable.</p> <p>Sediment and erosion controls must be installed prior to any disturbance of soil on site and maintained until all work is complete and groundcover reestablished.</p>
NECC (Water Management)	<p>Supported</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • Northern Beaches Water Management for Development Policy (WM Policy), and; • Relevant LEP and DCP clauses; <p>The development application seeks consent for the renovation of golf course greens, construction of one new green, and removal and replacement of trees.</p> <p>The application has been assessed in consideration of the above, noting that consent must also be gained from NSW Department of Planning and Environment – Water under a controlled activity permit (approval is required under the provisions of the Water Management Act 2000).</p> <p>The proposal in its current form does not raise any water management concerns provided that appropriate environmental protections including sediment controls are in place during construction.</p> <p>The proposal includes excavation, and the geotechnical report provided indicates the presence of groundwater. A dewatering permit application must be made to Council for expected multiple instances or continuous dewatering.</p> <p>Sediment and erosion controls must be installed prior to any disturbance of soil on site and maintained until all work is complete and groundcover re-established.</p> <p>Please also refer to the Riparian referral.</p>
External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>

External Referral Body	Comments
Nominated Integrated Development - Department of Planning and Environment - Water - Water Management Act 2000, s91 - Controlled Activity Approval for works within 40m of watercourse	The Department of Planning and Environment - Water has reviewed the development application and have issued General Terms of Approval for part of the proposed development requiring a Controlled Activity approval under the Water Management Act 2000.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objections.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 1 Coastal Wetlands and littoral rainforest area

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

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

Comment:

Council is satisfied the proposed development is appropriately designed and sited in a manner that avoids adverse impact upon the integrity and water flows of nearby coastal wetlands.

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

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

Comment:

The proposed development is not expected to cause adverse impact to the coastal environment area.

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

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

Comment:

Council is satisfied that the proposed development is appropriately designed and sited to ensure adverse impact to the items referred to in subsection (1) is avoided.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

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

Comment:

Council is satisfied the proposed development is appropriately designed and sited in a manner that avoids adverse impact to the coastal use area.

Division 5 General

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

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

Comment:

Council is satisfied the proposed development will not cause an increased risk of coastal hazards on the site or surrounding land.

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

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

Comment:

All relevant provisions of applicable certified coastal management programs have been considered as part of the assessment of the application.

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

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the consent authority to consider whether land is contaminated.

In response to the above requirements of Chapter 4, the applicant has submitted a Combined Preliminary and Detailed Site Investigation dated 01/09/2023 and prepared by Martens & Associates. In its conclusion, the investigation states:

For the purposes of the proposed renovation works to 12 greens, this combined PSI [preliminary site investigation] and DSI [detailed site investigation] has been completed by MA to evaluate potential land contamination associated with historical and current land use that may pose a potential risk to on and off site receptors.

Available site history information indicated that the land was used as under construction as a golf course prior to 1941 and most of the existing greens were constructed prior to 1961. The IA [investigation area] has remained its use as Bayview Golf Course to present day.

IA walkover did not identify any surficial forms (i.e. soil staining or odour) of contamination. Council records indicate that Bayview Golf Course underwent earthworks during the 90s which are considered potential sources of contamination.

A conceptual site model was developed for the site following the completion of the MA PSI desktop review and visual site inspection, which identified the following AECs [areas of environmental concern]:

- Existing golf course use.
- Potential filled areas for the entire golf course.

In consideration of the identified AECs, there is a potential for the exposure pathway between contaminant and receptor to be complete, indicating there to be a risk of contamination within the IA. A soil sampling programme was therefore undertaken to further investigate these AECs via intrusive methods (surface sampling and borehole excavation) for visual assessment of asbestos and soil laboratory analysis of identified COPCs [contaminants of potential concern].

24 surface soil samples were collected to a maximum depth of 0.2 mBGL within the areas of proposed renovation works for the 12 greens (24 surface samples double composited - forming 12 composite samples). 12 boreholes were excavated via an electric auger to a maximum target depth of 1.2 mBGL at areas of potential fill. Soils at sampling locations were described fill material consisting of clayey and

/ or silty sands up to 1.0 mbgl, and alluvium and or residual soil material consisting of sandy and / or silty clays up to 1.2 mBGL. No visual evidence of potential contamination (i.e., PACM, odours or staining) was observed within subsurface soils.

Laboratory results of primary and composite samples were compared to human health and ecological assessment criteria based on residential (with accessible soil) land use. Laboratory analytical results for asbestos and all other COPCs were found at concentrations less than adopted SAC, indicating that contamination risk to human health and ecological receptors are considered low from potential exposure pathways via soil.

In light of the above, MA consider the IA to be suitable for green redevelopment works and no further contamination investigations are required.

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 recreational 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

The proposed development involved landscaping works only. No structures or buildings are proposed. Therefore, no principal development standards apply to this application.

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	N/A
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

Pittwater 21 Development Control Plan

Built Form Controls

The proposed development involved landscaping works only. No structures or buildings are proposed. Therefore, the built form controls do not apply to this application.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.9 Mona Vale Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.9 Estuarine Hazard - Business, Light Industrial and Other Development	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.13 Freshwater Wetlands (non Endangered Ecological Communities)	Yes	Yes
B4.14 Development in the Vicinity of Wetlands	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
C5.1 Landscaping	Yes	Yes
C5.2 Safety and Security	Yes	Yes
C5.4 View Sharing	Yes	Yes
C5.10 Protection of Residential Amenity	Yes	Yes
C5.17 Pollution control	Yes	Yes
D9.1 Character as viewed from a public place	Yes	Yes
D9.2 Scenic protection - General	Yes	Yes

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$8,910 is required for the provision of new and augmented public

infrastructure. The contribution is calculated as 1% of the total development cost of \$891,000.

CONCLUSION

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

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

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

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

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

PLANNING CONCLUSION

This proposal, for renovation of eleven (11) of the existing golf course greens, construction of one (1) new green and removal of trees has been referred to the Development Determination Panel (DDP) due to the receipt of five (5) submissions by way of objection.

The concerns raised in the objections and critical assessment issues have been addressed and resolved by the requirement to offset the removed trees with 40 replacement trees throughout the site and the preparation of a detailed soil contamination investigation and revised flood report.

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2023/0718 for Renovation of eleven (11) of the existing golf course greens, construction of one (1) new green and removal of trees

on land at Lot 1 DP 662920, 52 Cabbage Tree Road, BAYVIEW, Lot 1 DP 19161, 52 Cabbage Tree Road, BAYVIEW, Lot 5 DP 45114, 52 Cabbage Tree Road, BAYVIEW, Lot 7 DP 45114, 52 Cabbage Tree Road, BAYVIEW, Lot 6 DP 45114, 52 Cabbage Tree Road, BAYVIEW, Lot A DP 339874, 1825 Pittwater Road, BAYVIEW, Lot 1 DP 986894, 1825 Pittwater Road, BAYVIEW, Lot 2 DP 986894, 1825 Pittwater Road, BAYVIEW, Lot 3 DP 986894, 1825 Pittwater Road, BAYVIEW, Lot 150 DP 1003518, 1825 Pittwater Road, BAYVIEW, Lot 191 DP 1039481, 1825 Pittwater Road, BAYVIEW, Lot 300 DP 1139238, 1825 Pittwater Road, BAYVIEW, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
-	-	Site Plan	Craig Parry Design	21/08/2019
-	-	1st Green	Craig Parry Design	10/01/2022
-	-	2nd Green	Craig Parry Design	10/01/2022
-	-	3rd Green	Craig Parry Design	10/01/2022
-	-	4th Hole	Craig Parry Design	10/01/2022
-	-	5th Green	Craig Parry Design	10/01/2022
-	-	6th Green	Craig Parry Design	10/01/2022
-	-	7th Green	Craig Parry Design	10/01/2022
-	-	8th Green	Craig Parry Design	10/01/2022
-	-	10th Green	Craig Parry Design	10/01/2022
-	-	11th Green	Craig Parry Design	10/01/2022
-	-	12th Green	Craig Parry Design	10/01/2022
-	-	13th Green	Craig Parry Design	10/01/2022

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Acid Sulfate Soil Assessment (Ref: P2309440JR02V01)	1	Martens & Associates	27/04/2023

Acid Sulfate Soil Management Plan (Ref: P2309440JR03V01)	1	Martens & Associates	27/04/2023
Arboricultural Impact Assessment (Ref: BVG2023)	-	Bellevue Tree Consultants	21/04/2023
Combined Preliminary and Detailed Site Investigation (Ref: P2309440JR04V01)	1	Martens & Associates	01/09/2023
Estuarine Risk Management Report	-	Horton Coastal Engineering	27/04/2023
Flood Report (Ref: PDS24042023:825PITTWATERRD:BAYVIEW)	-	Pittwater Data Services	28/04/2023
Revised Flood Report (Ref: PDS10092023:825PITTWATERRD:BAYVIEW)	-	Pittwater Data Services	11/09/2023
Geotechnical Assessment (Ref: P2309440JR01V01)	1	Martens & Associates	27/04/2023
Waste Management Plan	-	Bayview Golf Club	Undated
23003 C110 - Sediment & Erosion Control Details	B	Chrisp Consulting	06/03/2023
23003 C111 - 1st Green Detail Plan	C	Chrisp Consulting	06/03/2023
23003 C112 - 2nd Green Detail Plan	C	Chrisp Consulting	06/03/2023
23003 C113 - 3rd Green Detail Plan	C	Chrisp Consulting	06/03/2023
23003 C114 - 4th Green Detail Plan	C	Chrisp Consulting	06/03/2023
23003 C115 - 5th Green Detail Plan	C	Chrisp Consulting	06/03/2023
23003 C116 - 6th Green Detail Plan	C	Chrisp Consulting	06/03/2023
23003 C117 - 7th Green Detail Plan	C	Chrisp Consulting	06/03/2023
23003 C118 - 8th Green Detail Plan	C	Chrisp Consulting	06/03/2023
23003 C119 - 10th Green Detail Plan	C	Chrisp Consulting	06/03/2023
23003 C120 - 11th Green Detail Plan	C	Chrisp Consulting	06/03/2023
23003 C121 - 12th Green Detail Plan	C	Chrisp Consulting	06/03/2023
23003 C122 - 13th Green Detail Plan	C	Chrisp Consulting	06/03/2023

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	19/06/2023
NSW Department of Planning and Environment - Water	Department of Planning and Environment - Water - Referral Response (Ref: IDAS-2023-10412)	19/10/2023

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

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

3. 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 \$8,910.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$891,000.00.

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

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

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

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

6. **Security Bond**

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

7. **Landscape Plan**

A landscape plan shall be issued to the Certifier prior to the issue of a Construction Certificate to include the following details:

- a) locations of the 40 replacement trees to be installed within the property boundaries,
- b) the replacement trees shall be made up of *Casuarina glauca*, *Eucalyptus robusta* and/or *Melaleuca quinquenervia*.

Certification shall be provided to the Certifier that these amendments have been documented.

Reason: Landscape amenity.

8. **No Clearing of Vegetation**

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

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

Reason: To protect native vegetation.

9. **Erosion and Sediment Control Plan**

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

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

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

Reason: Protection of the receiving environment.

10. **Dewatering for construction**

The removal of the groundwater and the taking/using of groundwater (even if the take and use is for disposal) may require approval under the Water Management Act 2000 (WMA). A certificate is required from a senior geotechnical engineer to confirm that adequate consideration of the WaterNSW dewatering for construction requirements has been made. If the need for approval under the WMA only becomes apparent after development consent then applicants must consult directly with WaterNSW.

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

Reason: Protecting the water resource

11. **Construction Environmental Management Plan**

A construction environmental management plan is to be prepared and implemented for the construction phase of the project. The plan is to include protocols to address any unexpected contamination finds which may be encountered during targeted excavation works for footings and other potential targeted minor excavation as part of the proposed development.

Reason: To ensure any contamination is managed effectively.

12. **Estuarine Hazard Design Requirements**

All development or activities must be designed and constructed such that they will not increase the level of risk from estuarine processes for any people, assets or infrastructure in surrounding properties; they will not adversely affect estuarine processes; they will not be adversely

affected by estuarine processes.

Reason: To minimise risks associated with coastal hazards for development in an estuarine environment.

13. **Estuarine Planning Level Requirements**

A higher Estuarine Planning Level (EPL) of 1.92m AHD has been adopted by Council for the subject site and shall be applied to all development proposed below this level as follows:

1. All structural elements below 1.92m AHD shall be of flood compatible materials;
2. All electrical equipment, wiring, fuel lines or any other service pipes and connections must be located either above 1.92m AHD or waterproofed to this level; and
3. The storage of toxic or potentially polluting goods, chemicals or materials, which may be hazardous or pollute the waterway, is not permitted below 1.92m AHD.

Reason: To ensure vulnerable components of the development are built at the appropriate level.

14. **Compliance with Estuarine Risk Management Report**

The development is to comply with all recommendations of the approved Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 27 April 2023 and these recommendations are to be incorporated into construction plans and specifications and maintained over the life of the development.

Reason: To minimise potential hazards associated with development in an estuarine habitat.

15. **Structural Engineering for Estuarine Risk**

Structural engineering design for the development shall be prepared to ensure that for its design life (taken to be 25 years as justified and accepted by Council) the development is able to withstand the wave impact forces and loadings identified in the approved Estuarine Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd. dated 27 April 2023.

Reason: To ensure structural engineering is prepared by an appropriately qualified professional

16. **Compliance with Standards**

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

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

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

17. **Sydney Water "Tap In"**

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

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

- "Tap in" details - see <http://www.sydneywater.com.au/tapin>

- Guidelines for Building Over/Adjacent to Sydney Water Assets.

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

18. **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 sections 6.9.1, 6.10, 6.11, and section 7.

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.

19. **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) trees 5 and 6 - *Eucalyptus robusta*, trees 8 to 10 - *Eucalyptus robusta*, tree 12 - *Acacia* sp., trees 24 and 25 - *Casuarina glauca*, tree 27 - *Eucalyptus robusta*, trees 30 to 40 - *Casuarina glauca*,

b) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised development works.

DURING BUILDING WORK

20. **Acid Sulfate Soils**

All excavation, construction and associated works must be conducted in accordance with the approved Acid Sulfate Soil Management Plan - Martens & Associates Pty Ltd P2309440R03V01 – April 2023

Reason: To ensure management of potential acid sulfate soils.

21. **Off-site Disposal of Contaminated Material**

Any contaminated material removed from the site must be disposed of at a waste facility that can lawfully receive that waste and must be done in accordance with Protection of the Environment Operations Act 1997 (NSW); and Environment Protection Authority's Environmental Guidelines: Assessment, Classification and Management of Liquid and Non-Liquid Wastes (1999).

Copies of all test results and disposal dockets must be retained for at least 3 years and be made available to authorised Council officers on request.

Reason: To protect environment and public health.

22. **Requirement to notify about new Acid Sulfate Soils evidence**

Any new information revealed during excavation works that has the potential to alter previous conclusions about Acid Sulfate Soils shall be immediately notified to the Council and the Principal Certifier and a report be obtained from a suitably qualified person. Any recommendations provided by the report are to be complied with during works.

Reason: To protect the environment.

23. **Tree and Vegetation Protection**

a) Existing trees and vegetation shall be retained and protected, including:

- i) all trees within the site not approved for removal, including trees and vegetation nominated for retention on the approved Plans,
- ii) all trees and vegetation located on adjoining properties,
- iii) all trees and vegetation within the road reserve.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Principal Certifier,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,

- ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

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

Reason: Tree and vegetation protection.

24. **Condition of Trees**

During the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to, or by seeking arboricultural advice from an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture during the works. In this regard all protected trees shall not exhibit:

- a) a general decline in health and vigour,
- b) damaged, crushed or dying roots due to poor pruning techniques,
- c) more than 10% loss or dieback of roots, branches and foliage,
- d) mechanical damage or bruising of bark and timber of roots, trunk and branches,
- e) yellowing of foliage or a thinning of the canopy untypical of its species,
- f) an increase in the amount of deadwood not associated with normal growth,
- g) an increase in kino or gum exudation,
- h) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
- i) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist/Project Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of trees.

25. **Wildlife Protection**

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

Reason: To protect native wildlife.

26. **Protection of Habitat Features**

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

Reason: To protect wildlife habitat.

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

Council proactively regulates construction sites for sediment management.

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

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

Reason: Protection of the receiving environment.

28. **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.

29. **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.

30. **Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

31. **Acid Sulfate Soil Management Confirmation**

Details demonstrating compliance with the approved Acid Sulfate Soil Management Plan - Martens & Associates Pty Ltd P2309440R03V01 – April 2023 is to be submitted to the satisfaction of the principle certifier prior to the issue of the occupation certificate.

Reason: To ensure management of potential acid sulfate soils.

32. **Landscape Completion**

Landscape works are to be implemented in accordance with the following conditions:

- a) 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,
- b) where the property is certified Bush Fire Prone Land, any new planting may be managed in accordance with Planning for Bushfire Protection 2019.

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

Reason: Environmental amenity.

33. **Condition of Retained Vegetation**

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

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

Reason: Tree and vegetation protection.

34. **Protection of Habitat Features**

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

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

Reason: To protect wildlife habitat.

35. **Replacement of Canopy Trees**

At least 40 locally native canopy trees are to be planted on the site to replace protected trees approved for removal and enhance the habitat of the endangered ecological communities. Species are to have a minimum mature height of 8.5m and be consistent with the existing vegetation within the site, and include species such as *Casuarina glauca*, *Eucalyptus robusta* or *Melealeuca quinquenervia* (paperbark) individuals.

Tree plantings are to be retained for the life of the development and/or for their safe natural life. Trees that die or are removed must be replaced with another locally native canopy tree.

Replacement plantings are to be certified as being completed in accordance with these conditions of consent by a qualified landscape architect, and details submitted to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To establish appropriate native landscaping.

36. **No Weeds Imported On To The Site**

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

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

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

37. **Priority Weed Removal and Management**

All Priority weeds (as specified in the Northern Beaches Local Weed Management Plan) within the development footprint are to be removed using an appropriate control method.

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

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

38. **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

39. **Landscape Maintenance**

Trees required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting. If any tree required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with any conditions of consent.

Reason: To maintain local environmental amenity.

40. **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.

41. **Geotechnical Recommendations**

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

Reason: To ensure geotechnical risk is mitigated appropriately.



ITEM 3.9**DA2022/1715 - 60 HUDSON PARADE CLAREVILLE -
ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
INCLUDING A SWIMMING POOL****REPORTING MANAGER** Steve Findlay**TRIM FILE REF** 2023/749234**ATTACHMENTS**
1 [↓](#) Assessment Report
2 [↓](#) Site Plan and Elevations**PURPOSE**

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approves** Development Consent to DA2022/1715 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 56 DP 7794, 60 Hudson Parade CLAREVILLE, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/1715
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Responsible Officer:	Gareth David
Land to be developed (Address):	Lot 56 DP 7794, 60 Hudson Parade CLAREVILLE NSW 2107
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Oliver Hartley Nicola Jane Hartley
Applicant:	Brook Lane Property Group Pty Ltd

Application Lodged:	19/10/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	25/10/2022 to 08/11/2022
Advertised:	Not Advertised
Submissions Received:	8
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 2,206,369.00
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EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) due to eight (8) objections being received and triggering the requirement to go to the panel.

The principle resident issues that were raised within the submissions include; tree removal; insufficient landscaped area; impacts on biodiversity and Spotted Gum Community; impacts to the foreshore area;

privacy; solar access; view loss; setbacks; the location and amenity impacts of the proposed pool; impacts to a potential heritage item; height and visual bulk; over-development; inconsistent with the character of the area and objectives of C4 zoning; and non-compliance with relevant planning controls within Pittwater LEP and DCP.

Notification and preliminary assessment raised a number of concerns. These concerns included; building height and bulk; landscaped area; setbacks; tree removal; works within the foreshore; heritage; and internal referral concerns. Amended plans and additional information were submitted to address these concerns. These amended plans reduced the height of the proposal, increased side setbacks of the pool and dwelling additions, increased proposed landscaped area, reduced proposed tree removal and deleted the proposed boat shed within the foreshore area. The assessment of the application is based on the amended plans.

The proposed development (as amended) would retain a single dwelling house and ancillary structures within a landscaped setting. The proposal is set below the general tree canopy height, includes adequate building modulation, articulation and changes in finishes to minimise bulk, and provides an appropriate balance between respecting the landform and encouraging development. The proposal (as amended) limits development within the foreshore area, will be below building height and will respect the integrity of the existing dwelling. Whilst there is some tree removal required as part of the development, multiple significant canopy trees are proposed to be retained in order to visually reduce the built form, most notably within the foreshore area. Proposed landscaping, in conjunction with existing and required landscaping (by recommended conditions contained within this report), will assist to visually screen the bulk and scale of the built form and integrate the built form into the landscape. Overall, it is considered that the bulk and scale of the proposal would not be out of character with the wider locale and the development would comply with the objectives of the C4 zone.

The property has been identified as being potentially of heritage significance, as the existing dwelling onsite was designed by the well known Australian architect Bruce Rickard in the late 1980s. Council's Heritage Officer (including external heritage consultants advice) has supported the proposal subject to two conditions, being a full photographic archival recording of the site, and amending the pool shape and increasing the northern setback to allow for an improved landscaped setting.

Potential amenity issues to surrounding neighbours have been reviewed under Council's Policies and have been determined to be reasonable within the context and setting of the residential environment (subject to recommended conditions).

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that, on balance the proposal (as amended) is a suitable and appropriate development for the subject site, for the reasons outlined in this report.

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

PROPOSED DEVELOPMENT IN DETAIL

The new works will provide for demolition works and the construction of alterations and additions to an existing dwelling including a new swimming pool.

Specifically, the proposed works consist of the following:

Lower Ground Floor:

- Addition to include laundry, living and kitchenette

- New internal access stair and lower courtyard

Ground Floor:

- Addition of 2 bedrooms
- Bathroom
- New ensuite and walk-in-robe to the master bedroom
- Garage with storage spaces, games room and bathroom.
- New internal stair.

First Floor:

- Addition to include new pantry, powder room and music room.
- Gallery hallway connection to the new front garage pavilion
- 2 Bedroom, with terrace, bathroom and mudroom.
- Entry from the street is provided at this level.

Roof

- The roof of the existing dwelling will largely be retained and will be extended to the east.

External

- New swimming pool
- Landscaping works including tree removal
- New driveway and crossover
- Excavation and fill works
- Retaining walls

AMENDED PLANS

During the assessment of the application, amended plans were submitted which reduced the height of the proposal, increased side setbacks of the pool and dwelling additions, increased landscaped area, reduced proposed tree removal and deleted the proposed boat shed.

The application has been assessed based off these amended plans.

An informal re-notification (via email) of the amended plans has been carried out. In accordance with Northern Beaches Community Participation Plan, amendments which have a reduction of impact or minimal environmental impact do not have to be formally re-notified. It is considered the proposed amendments would have an overall reduction of impact.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living
Pittwater Local Environmental Plan 2014 - 5.10 Heritage conservation
Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area
Pittwater 21 Development Control Plan - A4.1 Avalon Beach Locality
Pittwater 21 Development Control Plan - B1.3 Heritage Conservation - General
Pittwater 21 Development Control Plan - B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community
Pittwater 21 Development Control Plan - B4.22 Preservation of Trees and Bushland Vegetation
Pittwater 21 Development Control Plan - B6.1 Access driveways and Works on the Public Road Reserve
Pittwater 21 Development Control Plan - B8.1 Construction and Demolition - Excavation and Landfill
Pittwater 21 Development Control Plan - B8.3 Construction and Demolition - Waste Minimisation
Pittwater 21 Development Control Plan - B8.6 Construction and Demolition - Traffic Management Plan
Pittwater 21 Development Control Plan - C1.1 Landscaping
Pittwater 21 Development Control Plan - C1.3 View Sharing
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - C1.14 Separately Accessible Structures
Pittwater 21 Development Control Plan - C1.24 Public Road Reserve - Landscaping and Infrastructure
Pittwater 21 Development Control Plan - D1.1 Character as viewed from a public place
Pittwater 21 Development Control Plan - D1.8 Front building line
Pittwater 21 Development Control Plan - D1.9 Side and rear building line
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 56 DP 7794 , 60 Hudson Parade CLAREVILLE NSW 2107
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<p>Detailed Site Description:</p>	<p>The subject site consists of one (1) allotment located on the north-western side of Hudson Parade.</p> <p>The site is irregular in shape with a frontage of 28m along Hudson Parade and a depth of between 70.675m and 87.175m down to the mean high watermark. The site has a surveyed area of 1239m².</p> <p>The site is located within the C4 Environmental Living zone and accommodates 2 & 3 storey brick house and detached carport and parking bay accessed via a driveway from Hudson Parade. The property has been identified as potentially being of heritage significance, as the existing dwelling onsite was designed by the well known Australian architect Bruce Rickard in the late 1980s.</p> <p>The site has a crass fall of approximately 12.5m from the east (street frontage) to the west (Pittwater foreshore).</p> <p>The vegetation within the subject property comprises of scattered native canopy trees amongst a sparse mid-storey of predominately landscaped and planted species. Seventeen (17) trees grow within the site and an additional twelve (12) trees grow in close proximity within the street and neighbouring properties. The property is mapped as part of the existing Pittwater Spotted Gum Forest and contains multiple Spotted Gum trees.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by two and three storey single occupancy dwellings within a landscaped setting on sloping sites oriented towards Pittwater waterway.</p>
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Map:



SITE HISTORY

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

- **N1060/02** - Development Application for the construction of a new driveway, turning circle and parking bay - Approved 26/09/2003
- **N0071/14** - Development Application for a stepped sandstone seawall to align with existing embankment beach front and associated landscaping - Approved 25/08/2015

APPLICATION HISTORY

07 March 2023

Council sent an RFI letter to the applicant, raising concerns primarily in relation to:

- Building height and bulk
- Landscaped area
- Tree removal
- Internal referral concerns including Biodiversity, Landscaping, Parks & Reserves, Coast and Catchments, Roads Assets and Heritage

30 August 2023

Amended plans and additional information were submitted to address Council's concerns.

An email was sent to relevant objectors notifying them of amended plans. In accordance with Northern Beaches Community Participation Plan, amendments which have a reduction of impact or minimal environmental impact to do have to be formally re-notified. It is considered the proposed

amendments would have an overall reduction of impact.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended plans.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 25/10/2022 to 08/11/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 8 submission/s from:

Name:	Address:
Ms Janet Clare Forrester	59 Hudson Parade CLAREVILLE NSW 2107
Utz Sanby Architects	Suite 103 506 Miller Street CAMMERAY NSW 2062
Mr Geoffrey William Tyndall Sheppard	63 A Hudson Parade CLAREVILLE NSW 2107
Bill Tulloch	Po Box 440 MONA VALE NSW 1660
Maria Still	62 Hudson Parade CLAREVILLE NSW 2107
Mr Michael Anthony Still	62 Hudson Parade CLAREVILLE NSW 2107

Name:	Address:
Mrs Chelsey Baker	24 Old Barrenjoey Road AVALON BEACH NSW 2107
Docomomo Australia Inc	26 Staton Street NAREMBURN NSW 2065

The following issues were raised in the submissions:

- Building height and change in roof form
- Non-compliance with DCP Controls - Landscaped Area, side setback, building envelope, front setback
- Solar access
- Location and amenity impacts of the proposed pool (privacy acoustic impacts and solar access)
- Visual privacy
- Acoustic Privacy
- View loss
- Visual bulk
- Impacts on Flora/Fauna, Biodiversity and Spotted Gum Community
- Tree removal
- Requirement for native planting
- Heritage concerns
- Boat shed and impacts to foreshore area
- Insufficient landscaped area
- Stormwater
- Does not meet DCP objectives
- Overdevelopment and does not meet the character of the area or objectives of C4 Zoning
- Scenic protection
- Impacts of southern facade
- Excavation and geotechnical concerns and potential damage to adjoining properties
- External finishes to the roof
- Location of plant equipment
- Public Interest
- Fencing design
- Requirement of various conditions

The above issues are addressed as follows:

- **Building height and change in roof form**

Comment:

Following these submissions, amended plans were received which retained the height of the existing roof form and reduced the height of the development to below the stipulated 8.5m height requirement.

- **Non-compliance with DCP Controls - Landscaped area, side setback, building envelope, front setback**

Comment:

Following this submission, amended plans were received which reduced non-compliance with landscaped area, side setback and building envelope. For each of the numerical non-compliances, a merit assessment was carried out against the objectives of that control in this report. The assessment has found the proposed non-compliances to be reasonable in this instance (subject to conditions).

- **Solar access**

Comment:

The submitted solar access diagrams demonstrate that adjoining properties will receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st to principle private open space and windows to principal living areas of adjoining properties in accordance with Clause C1.4 Solar Access of P21DCP

- **Location and amenity impacts of the proposed pool (privacy acoustic impacts and solar access)**

Comment:

Given the location of the existing dwelling and constraints of the foreshore building line to the west, the location of the pool, is considered reasonable in this instance. During the assessment of the application, amended plans were received which increased the side setback of the pool to 1.6m from the northern side boundary to facilitate additional screen planting. Following a referral to Council's Heritage Officer, conditions have been recommended to increase the northern side setback of the pool to 2m to allow for more landscaping and for the proposal to present within a greater landscaped setting. This greater setback will also assist to reduce associated amenity impacts.

A swimming pool is a typical form of development within a residential environment and associated acoustic impacts are not considered unreasonable in this instance. If approved, conditions will be imposed requiring the pool filter to be acoustically treated so that it does not emit any noise louder than 5dB (A) above background noise at the nearest residential receiver.

Visual privacy has been addressed within the section of this report relating to Section C1.5 *Visual Privacy* of the P21 DCP. In summary, the proposal results in reasonable levels of privacy to adjoining properties (subject to recommended conditions).

The pool will adjoin south facing bedroom windows and will not result in unreasonable solar access impacts to the adjoining dwelling to the north which will retain adequate solar access to north and west facing windows and private open space.

- **Visual privacy**

Comment:

The proposed development is acceptable in relation to privacy for the reasons detailed in the section of this report relating to Section C1.5 *Visual Privacy* of the P21 DCP. In summary, the proposal results in reasonable levels of privacy to adjoining properties (subject to recommended conditions).

- **Acoustic Privacy**

The submissions raised concerns that with the location of the proposed pool and impacts on acoustic privacy.

Comment:

Given the location of the existing dwelling and constraints of the foreshore building line to the west, the location of the pool, is considered reasonable in this instance. A swimming pool is a typical form of development within a residential environment and associated acoustic impacts are not considered unreasonable in this instance.

If approved, conditions will be imposed requiring the pool filter to be acoustically treated so that it does not emit any noise louder than 5dB (A) above background noise at the nearest residential receiver.

- **View loss**

Comment:

The proposed development is acceptable in relation to view loss for the reasons detailed in the section of this report relating to Section C1.3 *View Sharing* of the P21 DCP. The requirements of this clause and the view sharing principles of *Tenacity Consulting vs Warringah Council [2004]* NSWLEC 140 have been addressed and the issues raised within the residents submissions in relation to view loss do not warrant further amendment or refusal of the application.

- **Visual bulk**

Comment:

Following this submission, amended plans were received which included a reduction in height, increased side setbacks of the pool and dwelling additions, reduced building envelope non-compliance, increased landscaped area, reduction of tree removal and the deletion of the proposed boat shed. It is considered that the proposed amendments adequately reduced the building bulk of the proposal. The proposal (as amended) exhibits a compliant building height and proposes sufficient building separation and landscaping to offset the built form. Furthermore, the proposed design of the first floor extension will compliment the existing dwelling. Therefore, the bulk and scale of the built form has been adequately minimised.

- **Impacts on Flora/Fauna, Biodiversity and Spotted Gum Community**

Comment:

Following this submission, amended plans were received which reduced the number of trees proposed to be removed. Of particular note, was the removal of the proposed boat shed which enabled the retention of Spotted Gums within the foreshore area. The proposal (as amended) seeks the removal of one (1) spotted gum tree (T2) to facilitate the development. The proposal is supported with a Flora and Fauna Assessment (Narla Environmental September 2023), which has concluded that a significant impact to the endangered ecological community and Biodiversity on the site is unlikely. The proposal (as amended) seeks to retain other spotted gum tree located on and adjoining the site.

The proposal and supporting documentation has been reviewed by Council's Bushland & Biodiversity Officer and Landscape Officer who support the proposal subject to conditions including replanting and adherence to protection measures within the submitted Aborigicultural Impact Assessment.

Please refer to the comments prepared by Council's Landscape Officer and Biodiversity Officer for further information related to Biodiversity and tree removal.

- **Tree removal**

Comment:

Following this submission, amended plans were received which reduced the number of trees proposed to be removed. Of particular note, was the removal of the proposed boat shed which enabled the retention of Spotted Gums within the foreshore area. The application is accompanied by an Aborigicultural Impact Assessment and Flora and Fauna Assessment Report to address the proposed tree removal and impact on biodiversity. Each report has been reviewed by Council's Landscape Officer and Biodiversity Team, with each referral team satisfied the proposal will not have an unacceptable impact, subject to conditions and adherence to each report as required by the recommended conditions of consent. Refer to Council's Landscape Officer and NECC Bushland and Biodiversity division comments under the 'Referral' section of this report for further discussion.

Suitable conditions have been imposed by Council's Landscape Officer to protect retained trees including adherence to the submitted Aborigicultural assessment which requires tree protection measures and the project Arborist prior to commencement of works. The Project Arborist shall be in attendance and supervise all works as nominated in the Aborigicultural Impact Assessment to ensure tree protection measures of trees to be retained both on the subject site and adjoining properties.

- **Requirement for native planting**

Comment:

The application has been reviewed by Council's Biodiversity Officer who has recommended a condition of consent requiring that at least 80% of any new planting incorporates native vegetation and the provision of four native replacement trees to offset the proposed tree removal.

- **Heritage**

The existing dwelling onsite was designed by the well known Australian architect Bruce Rickard in the late 1980s. The submissions raised concerns that the existing dwelling has heritage significance and that the proposed works would unreasonably impact the form and integrity of the site and existing built form.

Comment:

Following this submission amended plans were received which reduced the extent of works to the existing dwelling to retain the general form of the existing dwelling. The extent of tree removal was also reduced, most notably, within the foreshore area.

Please refer to Council Strategic and Place Planning (Heritage Officer) referral comments in this report for further details. In summary, Council's Heritage Officer (including external heritage consultants advice) has supported the proposal subject to two conditions being a full photographic archival recording of the site, and amending the pool shape and increasing the northern setback to allow for more landscaping.

- **Boat shed and impacts of development to the foreshore area**

Comment:

Following this submission, the proposed boatshed and works within the foreshore area were

removed from the plans. The proposal (as amended) will not result in unreasonable impacts to the foreshore area. Conditions have also been imposed limiting works within the foreshore.

- **Insufficient landscaped area**

Comment:

Following this submission, amended plans were received which increased the quantum of landscaped area and reduced the number of trees to be removed. A merit assessment has been carried out against the objectives of Clause *D1.14 Landscaped Area - Environmentally Sensitive Land* of P21DCP in this report. The assessment has found the proposed non-compliance to be reasonable in this instance (subject to conditions). The application has also been reviewed by Council's Bushland and Biodiversity Officer and Landscape Officer who have raised no objection to the proposal (as amended) subject to recommended conditions and replacement planting.

- **Stormwater**

Comment:

Council's Development Engineer and Water Management Officer have reviewed the proposed development with regards to the potential impact of the proposed development upon stormwater management and are satisfied that the development will adequately manage stormwater, subject recommended conditions of consent.

- **Does not meet DCP objectives**

Comment:

For each of the numerical non-compliances, a merit assessment was carried out against the objectives of that control in this report. The assessment has found the proposed non-compliances to be reasonable in this instance (subject to conditions).

- **Overdevelopment and does not meet the character of the area or objectives of C4 Zoning**

Comment:

Concern has been raised that the proposal is an overdevelopment of the site and the resulting building bulk and scale would not meet the character of Avalon Beach Locality or intent of C4 Environmental Living Zoning. These issues have been addressed throughout the report.

Following this submission, amended plans were received which included a reduction in height, increased side setbacks of the pool and dwelling additions, reduced building envelope non-compliance, increased landscaped area, reduction of tree removal and the deletion of the proposed boat shed.

The proposed development (as amended) would retain a single dwelling house and ancillary structures within a landscaped setting. The proposal is set below the general tree canopy height, includes adequate building modulation, articulation and changes in finishes to minimise bulk, and provides an appropriate balance between respecting the landform and encouraging development. The proposal limits development within the foreshore area, will be below building height and will respect the integrity of the existing dwelling. Proposed landscaping, in conjunction with existing and required landscaping (by recommended conditions contained within this report), will assist to visually screen the bulk and scale of the built form and integrate the built form into the landscape. Overall, it is considered that the bulk and scale of the

proposal would not be out of character with the existing streetscape and wider locale and the development would comply with the objectives of the C4 zone.

- **Scenic protection**

Comment:

Following this submission, amended plans were received which increased landscaped area and retained the existing trees within the foreshore area (through the deletion of the proposed boat shed). It is considered that the proposal (as amended) would meet the requirements of Clause D1.20 *Scenic Protection Category One Areas* of P21DCP as canopy trees and vegetation will be retained between the dwelling and Pittwater Waterway and the form of the dwelling will not be substantially altered as viewed from the waterway.

- **Impacts of southern facade**

The submissions raised concerns with the visual impact and extent of building proposed along the southern facade.

Comment:

Following this submission, amended plans were received which increased the setback of the proposed "gallery" walkway to 2.6m from the southern boundary. This increased setback will facilitate a break in the built form and provide screen planting along the southern boundary to mitigate the perceived visual impacts of the proposal. Additionally, this "gallery" area will be single storey and well below building height and envelope requirements.

- **Excavation and geotechnical concerns and potential damage to adjoining properties**

Comment:

In order to ensure that there are no adverse impacts on the adjoining neighbours, conditions have been imposed which ensure structural adequacy of landfill and excavation work; require dilapidation report for the adjoining properties; ensure the adherence of a Waste Management Plan; ensure the recommendations of the Geotechnical report is adhered to and implemented in the construction plans; ensure the proper installation and maintenance of sediment and erosion control and ensure topsoil is stockpiled on site and stabilised during construction works. The application is also supported by a Geotechnical Report which states that provided that the construction is undertaken in accordance with the recommendations, construction is not expected to affect the overall stability of the site or negatively influence the geotechnical hazards. Council's Development Engineers have reviewed the proposal and submitted Geotechnical Report and have raised no objection subject to recommended conditions.

- **External finishes to the roof**

Comment:

The colours and finishes to the roof are proposed to match the existing dwelling. Given the potential heritage significance of the existing dwelling, the maintenance of the existing colours and finishes to the roof are considered acceptable in this instance.

- **Amenity of plant equipment**

Comment:

In this regard, conditions are imposed to ensure that any plant equipment does not produce

noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

- **Public Interest**

Comment:

No matters have arisen in this assessment that would justify the refusal of the application in the public interest

- **Suggested design amendments**

Comment:

A submission was received which recommended a number of design amendments to the proposal. Following this submission, amended plans were received which incorporated some of these amendments including a reduction in height, increased side setbacks of the pool and dwelling additions, increased landscaped area, reduction of tree removal and the deletion of the proposed boat shed. As detailed within this report, the proposal (as amended) is now considered acceptable.

- **Requirement of various conditions**

Comment:

Suitable conditions have been imposed to mitigate potential impacts of the proposed development on the natural environment and adjoining neighbours.

- **Fencing design**

The submissions raised concerns that the pool fence is excessively tall and will create unreasonable impacts.

Comment:

As discussed above, conditions are to be imposed requiring the pool and associated fencing to be located 2m from the northern boundary. It is considered that this separation is reasonable and will allow for landscaping to mitigate the visual impact of the proposed pool fence.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>Council's Landscape Referral is assessed against the Pittwater Local Environment Plan (PLEP) clause C4 zone Environmental Living, and the following Pittwater 21 Development Control Plan (PDCP) controls (but not limited to):</p> <ul style="list-style-type: none"> • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • D1 Avalon Locality <p>The site is located in the C4 Environmental Living zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment,</p>

Internal Referral Body	Comments
	<p>including the retention of natural landscape features and existing trees, to satisfy the landscape objectives of the C4 Environmental Living zone. To achieve development in response to the objectives of the C4 Environmental Living zone, 60% of the property is required to be landscape area to promote the retention of existing natural landscape features including existing trees, or otherwise where no tree are existing, allow adequate landscape area to promote new tree canopy planting. The property is mapped as part of the existing Pittwater Spotted Gum Forest association, and the property supports seventeen existing trees..</p> <p>Amended plans are submitted with the application that illustrate site planning changes including the building arrangement. Amended and detailed Landscape Plans as requested by Landscape Referral are additionally submitted to allow for a full understanding of the landscape proposal. Upon review Landscape Referral raise no concerns with the landscape outcome as proposed and documented. Conditions shall be included to exclude proposed landscape works within the public road reserve, and otherwise conditions are able to be included for completion of landscape works and any other landscape requirements as imposed.</p> <p>Likewise an updated Arboricultural Impact Assessment report is submitted and no concerns are raised for tree removal within the arboricultural zone area impacted by construction works, should the application be approved. A total of nine existing trees (identified as T1, T2, T5, T7, T9, T10, T11, T12, and T13) are proposed for removal, and of these five are prescribed trees (T1, T2, T9, T10 and T11). Existing trees T5, T7, T12 and T13 are exempt species that do not require Council consent for management or removal.</p> <p>Within the property the following existing trees are identified for retention and protection: T3 (Native Daphne), T4 (Cheese Tree), T6 (Coast Banksia), T8 (Orchid Tree), and T14, T15, T16, T17 (all Spotted Gum), and fundamentally all these trees are beyond the arboricultural zone area of impact for existing trees and thus the proposed works do not impact upon these existing trees. All existing trees within the road reserve and within adjoining properties in proximity to the development site shall be retained and protected.</p> <p>Should the Assessing Planning Officer determine approval, Landscape Referral provide conditions of consent.</p>
NECC (Bushland and Biodiversity)	<p><u>Amended Referral Comments</u></p> <p>The amended development plans will avoid impact to trees previously proposed for removal, with these mainly located within the the foreshore setback. The revised plans will result in the removal of 17 trees, 6 of which are locally native. While some of these trees and native plants are characteristic species of Pittwater Spotted Gum Forest Endangered Ecological Community, the Flora and Fauna Assessment (Narla Environmental September 2023) has concluded</p>

Internal Referral Body	Comments
	<p>that a significant impact to the endangered ecological community is unlikely. They have proposed a range of environmental management and mitigation measures that are to be implemented as part of the development to further reduce the impacts of the proposal on the local biodiversity values.</p> <p>In addition, the Landscape Plan only identifies four species that are characteristic of the vegetation community, and the replacement of native canopy trees proposed for removal is also to be detailed. In order to comply with the relevant controls, the Plan is to be amended via way of condition to ensure a minimum of 80% of native plants proposed are characteristic of the Pittwater Spotted gum community, and also the replacement of native canopy trees.</p> <p><u>Referral Comments February 2023</u></p> <p>The application is proposing alterations and additions to the existing dwelling house and the construction of ancillary garage, boat storage and a new swimming pool. Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including:</p> <ul style="list-style-type: none"> • Biodiversity Conservation Act 2016 (BC Act) and Biodiversity Conservation Regulation 2017 • State Environmental Planning Policy (Resilience and Hazards) 2021 <ul style="list-style-type: none"> • 2.10 Development on land within the coastal environment area • Pittwater Local Environmental Plan (PLEP) <ul style="list-style-type: none"> • 7.6 Biodiversity Protection • Pittwater Development Control Plan (PDCP) <ul style="list-style-type: none"> • B4.7 Pittwater Spotted Gum Forest <p>Council's Biodiversity Unit do not support the proposal in its current form and concur with the matters raised by Council's Landscape Referral team. The key concerns raised by Biodiversity include:</p> <ol style="list-style-type: none"> 1. The development fails to provide an ecological assessment. 2. The proposed development does not demonstrate adequate avoidance or minimisation of biodiversity impacts in accordance with relevant legislation 3. The proposed impacts to Pittwater Spotted Gum Forest within the site are considered non-compliant with Clause 7.6 of the Pittwater Local Environmental Plan 2014 and B4.7 of the Pittwater 21 Development Control Plan. <p>Further detail on points (1) - (3) is provided below.</p>

Internal Referral Body	Comments
	<p>(1) Any new DA submitted to Council under Part 4 of the NSW Environmental Planning and Assessment Act 1979 (EP&A Act), may require assessment under the provisions of the Biodiversity Conservation Act. The application should be accompanied by a Flora and Fauna Assessment (FFA) prepared by a suitably qualified ecologist. The assessment should assess the biodiversity values of the subject site, include a Threatened species 'Tests of Significance' for any applicable threatened entities, prepared in accordance with Section 7.3 of the BC Act, a discussion of measures undertaken to avoid and minimise impacts of the development (see below), and identification of mitigation and/or compensatory measures to reduce impacts following avoidance and minimisation of impacts. The applicant should refer to the Biodiversity Requirements for Development Applications Guideline available on the Council website.</p> <p>(2) The NSW Biodiversity Conservation Act 2016 (BC Act) and Biodiversity Conservation Regulation 2017 (BC Regulation) requires that developments are first designed to avoid and minimise impacts to the natural environment, and then the residual impacts can then be assessed. The residual impact is the impact remaining after measures to avoid and minimise impacts to biodiversity have been applied.</p> <p>The development requires the removal of several trees that are characteristic of the Endangered Ecological Community Pittwater Spotted Gum Forest. This loss of vegetation is not supported and the footprint of the additions should be re-designed to minimise the loss to an acceptable degree. Additional justification of the tree removals proposed as part of a revised design is required.</p> <p>The applicant is encouraged to explore alternative design options that retain the significant biodiversity features within the site and utilise the existing vegetation, which is then complimented by suitable landscaping. No evidence of lower impact design options have been presented with the proposal, and therefore it is assumed that none have been considered.</p> <p>(3) At present, the application seeks to remove the majority of larger canopy trees, which are components of the TEC Pittwater Wagstaff Spotted Gum Forest. The proposed landscaping will not adequately offset the long-term loss, and is therefore considered inconsistent with PLEP7.6 and PDCP 4.7, and the development should not result in significant onsite loss of canopy cover or a net loss in native canopy trees. While four <i>Corymbia maculata</i> (Spotted Gums) are shown on the Landscape Plans proposed by Arcadia, the common name and mature height information is inconsistent, and there is doubt around the tree replacements proposed. A high percentage of native plants proposed should be characteristic of the Pittwater Spotted gum community, in order to comply with the relevant controls.</p>

Internal Referral Body	Comments
NECC (Coast and Catchments)	<p>SUPPORTED WITH NO CONDITIONS</p> <p>The application has been reassessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Resilience & Hazards) 2021 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP.</p> <p>The reassessment is based on amended master set dated 28 August 2023 and letter detailing revisions on the DA dated 29 August 2023 prepared by Bennett Murden Architects. According to revisions, proposed boatshed has been removed from the application.</p> <p>Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p>State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA.</p> <p>Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by BBF Pty. Ltd. dated September 2022, the DA satisfies requirements under clauses 2.10, 2.11 and 2.12 of the SEPP R&H.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021.</p> <p>Pittwater LEP 2014 and Pittwater 21 DCP</p> <p>Estuarine Risk Management</p>

Internal Referral Body	Comments
	<p>The subject property has also been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site.</p> <p>On internal assessment, based on the recently submitted revisions, the ground floor level for the proposed additions and alterations is above the applicable EPL for the site. The proposed development is therefore able to satisfy the relevant estuarine risk management requirements of P21 DCP.</p> <p>Development on Foreshore Area</p> <p>A section of the subject property is within the foreshore building line. Part 7, Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014 applies for any development within the foreshore area.</p> <p>The DA proposes no works on the foreshores area and hence, the DA does not require to satisfy the objectives and requirements of Part 7, Clause 7.8 of the Pittwater LEP 2014.</p> <p>Assessment dated 26 October 2022</p> <p>REFUSED REQUIRING ADDITIONAL REPORT</p> <p>The subject property has been identified as being affected, among others, by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. The Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to proposed development of a new boatshed at the site. The requirements of other relevant controls under D15. 15 Waterfront Development Controls in Pittwater 21 DCP may also need to be considered. Consideration should be given to 'section B3 Estuarine Hazard Controls relating to boatsheds'.</p>

Internal Referral Body	Comments
	<p>In accordance with the Pittwater Estuary Mapping of Sea Level Rise Impacts Study (2015), a base estuarine planning level (EPL) of RL2.71m AHD has been adopted by Council for this property. A reduction factor (RF) based upon the distance from the foreshore of proposed development may also apply at a rate of 0.07m reduction to the EPL for every 5.00m distance from the foreshore edge up to a maximum distance of 40.00m. No further reduction is applicable</p> <p>The proposal is, among others, to construct a boatshed. According to 'section B3 Estuarine Hazard Controls relating to boatsheds' of the Pittwater DCP, 'All floor levels shall be at or above the Estuarine Planning Level'.</p> <p>The Finished Floor Level (FFL) of the proposed boatshed is 2.50m AHD. An Estuarine Risk Management Report is required when the FFL of the boatshed is below the EPL.</p> <p>An Estuarine Risk Management Report should consider development constraints due to estuarine hazard impacts on the land, including an assessment of the degree of inundation, effects of wave action, impacts of waterborne debris, buoyancy effects, and other emergency issues during the design event (100 ARI event). The report should also contain recommendations as to any reasonable and practical measures that can be undertaken to remove foreseeable risk associated with estuarine hazards for the design life of the development.</p> <p>An estuarine risk management report must be prepared by a specialist coastal engineer who is a registered professional engineer with chartered professional status (CP Eng) and with coastal engineering as a core competency and has an appropriate level of professional indemnity insurance.</p> <p>Based on above considerations, a further assessment of the DA remains pending</p>
NECC (Development Engineering)	<p>No engineering objections subject to conditions as recommended.</p> <p>Review 6/9/2023 Amended plans have been reviewed. No objections to approval subject to conditions as recommended.</p>

Internal Referral Body	Comments		
NECC (Riparian Lands and Creeks)	<p>This application was assessed in consideration of:</p> <ul style="list-style-type: none">• Supplied plans and reports;• Coastal Management Act 2016;• State Environmental Planning Policy (Resilience and Hazards) 2021;• Relevant LEP and DCP clauses; and• Northern Beaches Water Management for Development Policy <p>Supported with conditions</p>		
Parks, reserves, beaches, foreshore	<p>Council's Parks Reserves and Foreshores Referral is assessed against the Pittwater Local Environment Plan (PLEP) clause 7.8 Limited development on foreshore area. The development property adjoins Pittwater waterway downslope.</p> <p>The updated plans remove the previously proposed structures within the foreshore zone and the amended plans include the retention of existing landscape features within the foreshore zone. The development proposal maintains the foreshore landscape character, and as such Parks, Reserves and Foreshores raise no concerns with the development proposal.</p>		
Road Reserve	T&CI have no objections to the plans.		
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS		
	Discussion of reason for referral		
	The proposal has been referred to Heritage as the property was identified as potentially being of heritage significance.		
	Details of heritage items affected		
	There is no inventory information for this property. However the property is a brick and concrete dwelling designed by the well known Australian architect Bruce Rickard in the late 1980s.		
	Other relevant heritage listings		
	SEPP (Biodiversity and Conservation) 2021	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register		
	RAIA Register of 20th Century Buildings of Significance		
	Other	N/A	
	Consideration of Application		
This response to amended plans follows on the initial discussions with the owners and their architects In which the unusual nature of			

Internal Referral Body	Comments
	<p>this house as a Rickard design - one that has not been heritage listed, but which clearly has an importance as both an exemplar of his work and part of his body of work - was freely acknowledged and indeed cited by the owners as pivotal in their decision to buy the property.</p> <p>APPROACH The extent of change - demolition and integration of new areas - within the existing house was a concern arising out of the original modification plans, and following a site meeting and inspection and discussions with the owners and their architects, comment was provided and emphasis placed upon keeping the most obvious and significant characteristics and characteristic parts of the house, while acceding that change of the comparatively simple and "lesser" parts of the house might occur, depending on design.</p> <p>While the house is not a heritage item it is clearly of heritage interest and its conservation as an example of Rickard's work - and in part, a strategic one - is more than desirable. There is, according to one's philosophy, a responsibility involved. There are very obvious resonances between this house, the Mackenzie House as its is called in the authoritative Rickard "Catalogue Raisonne", and the earlier Curry House 2 (1980) which is arguably one of Rickard's master-work domestic statements and achievements.</p> <p>To this end the preparedness of the owners and their architects to work with Council in addressing the heritage dimensions of the project is most welcome and much appreciated.</p> <p>It could be argued that the key areas of the house, and those to which significance obviously attaches, are those extending back from the "rear" east wall of the kitchen. The areas east of the stair, focussed on the entry and lesser bedrooms and service areas, are plain by comparison and while there is function as a "foil" to the more ambitious, primary statement areas of the house, there is an acknowledgeable capacity for adaptation.</p> <p>These comments examine the changes to the existing house, the link passage and central pool area, and the new garage and guest pavilion.</p> <p>THE EXISTING HOUSE The amended plans retain the main roof profile, distinguishing the addition by a lowered break roof at the current end gable. While it is regrettable that demolition extends to the kitchen area and its north bay, the new work retains the essential manner of integration with a projecting bay to the north and rear of the projecting terrace (and master bedroom) below. Revised bedrooms, bathrooms and a revised line of wall to the southern elevation complete the adapted house. The new southern side of the house allows for a</p>

Internal Referral Body	Comments
	<p>new line of corridor access and stairs commenting the levels, within a differentiated timber-walled lateral extension kept under the existing main roof form. The projecting corner music room is an interpretation of Rickard's opening corner of the existing house.</p> <p>The drawings show the ground around the projecting new lower ground living area and studio to be more level and finish-paved, where in its current perhaps less formal presentation, the ground is left more natural and unfinished. This might be contemplated in the new landscaping of this area, which will admittedly have a different relationship with the site. However in light of other changes made to better reflect Rickard's design, this matter will not be pursued.</p> <p>LINK PASSAGE AND POOL The linking passage between the new arrival areas and the new main circulation areas of the house has been lightened in its treatment from the original presentations. Some concern must arise from the proposed pool in its shape and landscape setting, as its scale and size in the central space, its angularity and that of the associated walls are all something of a strong departure from the simple shape and settings of Rickard's pools, which suggest that a simpler, orthogonal character for the pool and its containing walls would be more appropriate. Its angularity and shapes reflect the new garage/guest pavilion but are arguably promise a discordant and divergent character from the house, with which it will read strongly.</p> <p>GARAGE/GUEST PAVILION In its scale, bulk and dramatic presence this element of the proposal represents the most challenging and obvious change to the setting of the Rickard house. Like the pool, the angularity of the pavilion's roof with its concrete prow-shaped projection to the street, is divergent from Rickard's line and character. The original building cannot be seen to great advantage from its street frontage and its substantial setback, to enjoy the best views from the land, left opening for the pavilion strategy which is now part of a way to retain and adapt the house in the context of its highly upscaled values and the current expectations of such a site.</p> <p>CONCLUSION The heritage question to be addressed in assessment of the proposal is whether or not the significance of the house will be unacceptably compromised by the proposal. Three aspects of it require focus - the existing house, the proposed addition (garage pavilion and link) and the pool court and landscaping between the house and addition.</p> <p>The additions to the house have been negotiated to a responsive approach in the changes required. The key aspect of the house - its presentation to the Sound, recognisably its designer's work, will</p>

Internal Referral Body	Comments
	<p>remain.</p> <p>The new garage pavilion and link will be recognisably a “different work” and will constitute a different approach path and experience to the house. Their reconciliation with the retained Rickard nucleus of the house has been carefully considered. Opinions on their success will vary.</p> <p>The pool court continues design themes and character inherent in the new elements into the setting of the existing house, its alterations and particularly the retained Rickard projections to the north. In my opinion the pool court and pool could beneficially adopt a simpler, more rectangular line in its interface with the retained Rickard core of the dwelling, and I would recommend this be put to the applicants for their consideration. A reduction in the different line and angularity of the pool and associated stairs and simpler landscaping reflecting Rickard’s approach may be helpful. Heritage will condition that the pool shape be amended to straighten its edges and its setback to the north increased to allow for more soft landscaping.</p> <p>Inherent in these conclusions are the opinion that the significance and circumstances of the house do not support a greater intervention by Council. It is often a convenient excuse in such circumstances to rely on the existence of other greater and better examples of an architect’s work. This is frequently raised by heritage consultants in support of adverse approaches and impacts on significant buildings. However, the unlisted status of this house and its comparison with other works by Rickard lead to a conclusion of that effect.</p> <p>SUMMARY Therefore Heritage can support the proposal subject to two conditions being a full photographic archival recording of the site, and amending the pool shape and increasing the northern setback to allow for more landscaping.</p> <p>Consider against the provisions of CL5.10 of PLEP.</p> <p>Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No</p>
External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.A470828 dated 26/09/2022).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

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

Comment:

The proposed works are not likely to cause an adverse impact upon the matters identified in this clause. The proposed works do not discourage public access or amenity along the foreshore area nor impact on natural foreshore processes. During the assessment, works proposed within the foreshore were deleted. The proposal has been reviewed by Council's Coastal Officer, Development Engineer and Bushland & Biodiversity Officer who have raised no objection to the works and associated impacts to the surrounding natural environment.

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

Comment:

Council is satisfied the proposed works are designed, and can be managed, to avoid adverse impacts based upon the matters identified in this clause. The application has been reviewed by Council's Coast and Catchment Officer who has raised no objection to the works

Division 4 Coastal use area

2.11 Development on land within the coastal use area

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

Comment:

The proposed development is also unlikely to cause an adverse impact to existing public open space and safe access to and along the foreshore and beach for members of the public, including persons with a disability.

The proposed development will maintain the existing, safe access to and along the foreshore and beach and will not cause any overshadowing, wind funnelling or loss of views from public places to foreshores. The visual amenity and scenic qualities of the coast, including the coastal headlands, will be preserved. A condition has been included to ensure that if any Aboriginal engravings or relics are unearthed as part of the development, works will cease immediately and the relevant authorities will be notified.

The proposed development will also not have an adverse impact on the cultural and built environmental heritage. Council's Heritage Officer has recommended approval as the proposal would not result in unreasonable impact to the existing house.

As such, it is considered that the proposed development has been designed, sited and will be managed to avoid an adverse impact on the aforementioned cultural and environmental aspects.

Furthermore, the proposed development is considered to be of an acceptable bulk, scale and size that is generally compatible with the existing site and surrounding coastal and built environment, which consist of low-density residential dwellings. Proposed landscaping, in conjunction with existing and required landscaping (by recommended conditions contained within this report), will assist to visually screen the bulk and scale of the built form and integrate the built form into the landscape.

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 application has been reviewed by Council's Coastal Engineer and Development Engineer who are satisfied that the development is not likely to cause increased risk of coastal hazards on other land subject to conditions.

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

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential 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	8.0m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone C4 Environmental Living

The underlying objectives of the C4 Environmental Living Zone are:

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

Comment:

The proposed development (as amended) would retain a single dwelling house and ancillary structures within a landscaped setting. Whilst there is some tree removal required, the proposed development has been designed to retain and protect the majority of significant trees on the site the application is accompanied by an Aboricultural Impact Assessment and Flora and Fauna Assessment Report to address the proposed tree removal and impacts on biodiversity. Each report has been reviewed by Council's Landscape Officer and Biodiversity Team, with each referral team satisfied the proposal will not have an unacceptable impact, subject to conditions and adherence to each report as required by the recommended conditions of consent. Proposed landscaping, in conjunction with existing and required landscaping by conditions, will assist to visually screen the bulk and scale of the building and integrate the built form into the landscape as viewed from the street and waterway. The proposal is set below the general tree canopy height, includes adequate building modulation, articulation and changes in finishes to minimise bulk, and provides an appropriate balance between respecting the landform and encouraging development. The proposal (as amended) limits development within the foreshore area, will be below building height and will respect the integrity of the existing dwelling.

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

Comment:

As above, the proposal (as amended) would not result in unreasonable impacts to the ecological,

scientific or aesthetic values of the area. The proposal has also been assessed by Council's Bushland and Biodiversity; Landscape Officer; Development Engineer; Water Management Officer and Coast & Catchment Officer who have raised no objection to the proposal in relation to the natural environment subject to recommended conditions.

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

Comment:

The proposed development (as amended) would retain a single dwelling house and ancillary structures within a landscaped setting. The proposal is set below the general tree canopy height, includes adequate building modulation, articulation and changes in finishes to minimise bulk, and provides an appropriate balance between respecting the landform and encouraging development. The proposal limits development and retains trees within the foreshore area, will be below building height and will respect the integrity of the existing dwelling. Proposed landscaping, in conjunction with existing and required landscaping (by recommended conditions contained within this report), will assist to visually screen the bulk and scale of the built form and integrate the built form into the landscape.

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

Comment:

The proposal will not unreasonably impact upon riparian or foreshore vegetation or wildlife corridors. The proposal has been assessed by Council's Bushland and Biodiversity and Riparian lands Officer who have raised no objection to the proposal in relation to the natural environment subject to recommended conditions. During the assessment of this application amended plans were received which removed the proposed works from the foreshore area and retained existing canopy trees within this area.

5.10 Heritage conservation

The proposal has been referred to Heritage as the property was identified as potentially being of heritage significance.

Please refer to Council Strategic and Place Planning (Heritage Officer) referral comments in this report for further details. In summary, Council's Heritage Officer has raised no objections to the proposal (as amended) subject to conditions which include amending the pool shape and increasing the northern setback to allow for more landscaping.

7.1 Acid sulfate soils

The proposed works will be located on Class 5 Acid sulfate soil and will therefore meet the requirements of this control.

7.2 Earthworks

The objective of Clause 6.2 - 'Earthworks' requires development to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

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

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

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

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

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

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

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

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

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

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

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

(f) the likelihood of disturbing relics

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

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

Comment: The development has been assessed by Council's Coast & Catchment Officer and Biodiversity Officers, who have raised no objection to the proposal subject to conditions.

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

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

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

Comment: Council's Heritage Officer has raised no objections to the proposal (as amended) subject to conditions which include amending the pool shape and increasing the northern setback to allow for more landscaping.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of PLEP 2014, Pittwater 21 DCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

7.6 Biodiversity protection

Before determining a development application for development on land to which this clause applies, this clause requires the consent authority to consider:

(a) whether the development is likely to have:

(i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and

(ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and

(iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and

(iv) any adverse impact on the habitat elements providing connectivity on the land, and

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the development will not have any adverse impact on the condition, ecological value and significance of the fauna and flora on the land; the importance of the vegetation on the land to the habitat and survival of native fauna; or the habitat elements providing connectivity on the land. Council is also satisfied that the development will not unreasonably fragment, disturb, or diminish the biodiversity structure, function, or composition of the land.

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

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the proposal includes appropriate measures to avoid, minimise, or mitigate the impacts of the development.

Before granting development consent, this clause also requires the consent authority to be satisfied that:

(a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or

(b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or

(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the development is designed, sited and will be managed to any significant adverse environmental impact.

7.7 Geotechnical hazards

Under Clause 7.7 Geotechnical Hazards, before determining a development application for development on land to which this clause applies, the consent authority must consider the following matters to decide whether or not the development takes into account all geotechnical risks:

- (a) *site layout, including access,*
- (b) *the development's design and construction methods,*
- (c) *the amount of cut and fill that will be required for the development,*
- (d) *waste water management, stormwater and drainage across the land,*
- (e) *the geotechnical constraints of the site,*
- (f) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment:

The proposed development is supported by a geotechnical risk assessment, an excavation plan, and stormwater management plans that demonstrate all geotechnical risks have been taken into account. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

Development consent must not be granted to development on land to which this clause applies unless:

- (a) *the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and*

Comment:

The proposed development is supported by a geotechnical risk assessment and stormwater management plans that demonstrate waste water, stormwater and drainage are suitably managed on site. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

(b) *the consent authority is satisfied that:*

- (i) *the development is designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development, or*
- (ii) *if that risk or impact cannot be reasonably avoided - the development is designed, sited and will be managed to minimise that risk or impact, or*
- (iii) *if that risk or impact cannot be minimised - the development will be managed to mitigate that risk or impact.*

Comment:

The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent. As such, Council can be satisfied that the proposed development has been designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development.

7.8 Limited development on foreshore area

The proposed plans (as amended) indicate that no works are proposed within the foreshore area. A condition of consent is to be included specifying that no works are permitted within the foreshore area and that this consent does not authorise or regularise existing development within the foreshore area.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	2.3m - 8.7m (Garage) 3.3m - 14m (First floor)	65% (Max)	No
Rear building line	N/A - FBL Applies	N/A	N/A	N/A
Side building line	2.5m (N)	1.6m (Pool)	N/A	No
	1m (S)	1m	N/A	Yes
Building envelope	3.5m (N)	Within envelope	N/A	Yes
	3.5m (S)	Outside envelope	N/A	No
Landscaped area	60% (743.4sqm)	54% (677sqm)	9%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	No	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.15 Saltmarsh Endangered Ecological Community	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	No	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	No	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D1.1 Character as viewed from a public place	No	Yes
D1.5 Building colours and materials	Yes	Yes
D1.8 Front building line	No	Yes
D1.9 Side and rear building line	No	Yes
D1.11 Building envelope	No	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	No	Yes
D1.20 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

A4.1 Avalon Beach Locality

The proposed development consists of part a two/part three storey dwelling house, where the locality calls for two storey development. However, the existing development is three storeys in height and the proposed works do not result in any additional storeys.

The addition is considered appropriate in the context of the site in that the subject site slopes away from the street, with the proposed development having the appearance of being single storey as viewed from Hudson Parade. The existing dwelling and surrounding dwellings along Hudson present a mixture of two and three storey typology as viewed from the Pittwater Waterway. Proposed landscaping, in conjunction with existing and required landscaping by recommended conditions contained within this report, will assist to visually screen the bulk and scale of the built form and integrate the built form into the landscape.

On balance and in consideration of the existing built form, the proposal is considered consistent with the desired future character of the Avalon Beach locality.

B1.3 Heritage Conservation - General

The proposal has been referred to Heritage as the property was identified as potentially being of heritage significance.

Please refer to Council Strategic and Place Planning (Heritage Officer) referral comments in this report for further details. In summary, Council's Heritage Officer (including external heritage consultants advice) has raised no objections to the proposal (as amended) subject to conditions which include amending the pool shape and increasing the northern setback to allow for more landscaping.

B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community

The proposal seeks the removal of one (1) spotted gum tree (T2) to facilitate the development. The proposal is supported with a Flora and Fauna Assessment (Narla Environmental September 2023), which has concluded that a significant impact to the endangered ecological community is unlikely. The proposal (as amended) seeks to retain other spotted gum tree located on and adjoining the site.

The proposal and supporting documentation has been reviewed by Council's Bushland & Biodiversity Officer and Landscape Officer who support the proposal subject to conditions including replanting and adherence to protection measures within the submitted Aboricultural Impact Assessment.

Please refer to the comments prepared by Council's Landscape Officer and Biodiversity Officer for further information related to the tree removal.

In summary, subject to compliance with recommended conditions, the application is seen to meet the outcomes of this clause and is supported on merit

B4.22 Preservation of Trees and Bushland Vegetation

The application is accompanied by an Aboricultural Impact Assessment and Flora and Fauna Assessment Report to address the proposed tree removal and impact on biodiversity. Each report has been reviewed by Council's Landscape Officer and Biodiversity Team, with each referral team satisfied the proposal will not have an unacceptable impact, subject to conditions and adherence to each report as required by the recommended conditions of consent. Refer to Council's Landscape Officer and NECC Bushland and Biodiversity division comments under the 'Referral' section of this report for further discussion.

Subject to compliance with recommended tree planting conditions, the application is seen to meet the outcomes of this clause and is supported on merit.

B6.1 Access driveways and Works on the Public Road Reserve

Council's Road Assets Officer and Development Engineer and Landscape Officer have reviewed the proposed works on the Road Reserve and have raised no objection subject to conditions. Such conditions ensure appropriate approval under the provisions of the Roads Act 1993 and ensure the works structurally adequate and meet appropriate engineering standards.

B8.1 Construction and Demolition - Excavation and Landfill

The proposal seeks to excavate and fill portions of the land facilitate the development. Council's Development Engineers have reviewed the proposal and submitted Geotechnical Report and have raised no objection subject to recommended conditions.

In order to ensure that there are no adverse impacts on the adjoining neighbours, conditions have been imposed which:

- Ensure structural adequacy of landfill and excavation work and retaining walls;
- Require dilapidation reports for adjoining proprietaries;

- Ensure the preparation and the adherence of a Waste Management Plan;
- Ensure the recommendations of the Geotechnical report is adhered to;
- Ensure the proper installation and maintenance of sediment and erosion control;
- Ensure topsoil is stockpiled on site and stabilised during construction works;

The proposal has also been assessed by Council's Bushland and Biodiversity; Landscape Officer; and Coast & Catchment Officer who have raised no objection to the proposal in relation to the natural environment subject to recommended conditions.

B8.3 Construction and Demolition - Waste Minimisation

The application has not been accompanied by a Waste Management Plan. To ensure the proper disposal of builder's waste, a suitable condition has been included with this consent requiring the applicant to submit a detailed Waste Management Plan to the Certifying Authority prior to the issue of the Construction Certificate. The Waste Management Plan must be prepared in accordance with Council's Waste Management Guidelines. Subject to compliance with the conditions of consent, the proposal will demonstrate consistency with the requirements and outcomes of this control.

B8.6 Construction and Demolition - Traffic Management Plan

A condition has been imposed requiring the Applicant to submit an application for Construction Traffic Management Plan to Council for approval prior to issue of the Construction Certificate. The Traffic Management Plan shall be prepared to RMS standards by an appropriately certified person and further conditions ensure this will be implemented during works.

C1.1 Landscaping

Please refer to the referral comments prepared by Council's Landscape Officer. The proposal would meet the requirements of this control subject to recommended conditions.

C1.3 View Sharing

Merit Consideration

One (1) submission was received from the following property which included concerns regarding view loss from a private property:

- 62 Hudson Parade CLAREVILLE

The development is considered against the underlying Objectives of the Control as follows:

- ***A reasonable sharing of views amongst dwellings.***

Comment

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004)* NSWLEC 140, are applied to the proposal.

1. Nature of the views affected

"The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured"

Comment to Principle 1

The views from No.62 Hudson Parade that are the concern are to the north and north-west and include views of Pittwater Waterway and land and water interface. This is demonstrated in the photos below.



Photo 1: Existing views from No.62 Hudson Parade to the north (ground floor dining room).



Photo 2: Existing views from No.62 Hudson Parade to the west (ground floor living room). Views are unobstructed by the proposal.



Photo 3: Existing views from No.62 Hudson Parade to the north (ground floor balcony located off living areas).



Photo 4: Existing views from No.62 Hudson Parade to the north-west (first floor living room).



Photo 5: Existing views from No.62 Hudson Parade to the north (first floor living room).



Photo 6: Existing views from No.62 Hudson Parade to the west (first floor living room). Views are unobstructed by the proposal.



Photo 7: Existing views from No.62 Hudson Parade to the north-west (ground terrace).

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

Views of concern are obtained from the "ground floor" elevated kitchen/dining and living room and the deck (and principle private open space) located off these rooms. Views are also obtained from the upper level second living/master bedroom and balcony located off these rooms. Views are further obtained from the lower ground level garden/terrace areas.

The view which is of concern is obtained from both a sitting and standing position over the northern side boundary. The expansive Pittwater views to the west remain unaffected by the proposal

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

As viewed from No.62 Hudson Parade, the proposed dwelling additions (as amended) are not anticipated to result in any significant impacts to existing views. The westernmost section of built form of the existing dwelling, including the roof formation, is proposed to be retained as existing. The proposed works will primarily occur to the easternmost portion of the site, where the existing dwelling already impacts view corridors.

Expansive views of Pittwater Waterway are expected to be retained over and to the south and to the west of the proposal.

This can be seen within the photos above.

In consideration of the proportion of view lost in comparison to views retained, the extent of the impact is considered to be to be **negligible 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

Overall, the view loss associated with the proposal is considered negligible to minor when put in context of the entirety of views obtained from adjoining properties and the location of. As such, the proposal is not considered to result in an unreasonable view loss. The built form noncompliance's associated with the proposal have been addressed within this report and are considered to meet the objectives of the control.

During the assessment of the application, amended plans were submitted which reduced the height of the proposal and retained the existing roof form and deleted the proposed boat shed. These amendments reduced the associated view loss and is therefore considered a more skillful design.

- ***Views and vistas from roads and public places to water, headland, beach and/or bush views are to be protected, maintained and where possible, enhanced.***

Comment

The proposal is not anticipated to result in unreasonable view loss from the road. The works will be located behind (eastward) of the existing dwelling and the front of the site includes dense screen vegetation and canopy trees which filter existing views.

- ***Canopy trees take priority over views.***

Comment

During the assessment of the application, amended plans were received which retained canopy trees within the foreshore area. Subject to compliance with recommended tree planting conditions, the application is seen to meet the outcomes of this clause and is supported on merit.

Having regard to the above assessment, it is concluded that the outcomes of the clause have been achieved. Therefore, the application is supported on merit in this particular circumstance.

C1.5 Visual Privacy

Description of Non-compliance

Clause C1.5 of the P21DCP stipulates that private open space areas and windows of adjoining properties are to be protected from direct overlooking within 9.0m by building layout, landscaping, screening devices or greater spatial separation. The proposed development contains side facing windows and private open space which are within 9.0m from both the northern (No.58 Hudson Parade) and southern (No.62 Hudson Parade) neighbours.

Submissions in relation to privacy have been received by both adjoining neighbours and are considered below.

Merit Assessment

With regard to the consideration for a variation, the proposed development is considered against the underlying outcomes of the control as follows:

- ***Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design.***

No.58 Hudson Parade (north)

Windows and balcony

The northern facade of the existing dwelling contains a large number of existing windows which result in potential overlooking to the adjoining neighbour to the north. The proposal predominately seeks to replace or retain these windows in similar locations to what currently exists. As this is an existing situation, these replacement windows are considered acceptable in this instance.

The new two storey addition, directly to the east of the existing dwelling, will contain northern facing windows. However, these windows will be suitably offset from the windows and private open space of No.58 Hudson Parade and are not anticipated to result in unreasonable privacy impacts.

The new "gallery" addition will contain windows for the entire length of the northern facade. However, these windows will be over 10m from the northern side boundary and southern facing windows of No.58 Hudson Parade. Additionally, screen planting and new pool fencing is proposed which will provide a degree of privacy. Furthermore, this "gallery" is designed as a walkway for momentary access and its narrow design does facilitate prolonged usage. Given the spatial separation and design of this gallery, as well as the implementation of screen planting, the proposed northern windows are not anticipated to result unreasonable privacy impacts.

The proposed eastern pavilion of the development (adjacent to and above the proposed garage), proposes a terrace located off "bedroom 4". During the assessment of the application, amended plans were received which reduced the size of this terrace and increased the side setback to 5.5m. These amended plans also provided additional screen planting along the northern side boundary adjoining this terrace area. The elevation and setback of this terrace as well as proposed screen planting is considered to retain reasonable privacy from No.58 Hudson Parade's private open space. This terrace will also adjoin (and be above) a green roof which will mitigate downward overlooking and provide additional screen planting. Furthermore, this terrace would serve a bedrooms which are not considered high usage areas. If approved a condition is to be imposed to ensure the area labelled as "green roof" is to be non-trafficable for the life of the development.

Swimming pool and terrace

The proposed swimming pool and associated coping/terrace will be 1.6m from the northern side boundary and south facing bedroom windows of No.58 Hudson Parade. During the assessment of this application, amended plans were received which increased the side setback of the pool to facilitate additional screen planting along the northern side boundary. Given the fall of the land to the north, the pool fence will be elevated above the these adjoining windows. As such, the location and height of the pool fence will mitigate privacy impacts and overlooking into these adjoining windows for the users of the proposed pool. Additionally, the proposed pool contains a minimal amount of decking/coping adjacent to this neighbour, which will limit overlooking opportunities. Furthermore, screen planting is proposed adjacent to this boundary which will provide additional visual and acoustic privacy. If approved conditions will be imposed requiring the northern elevation of the pool balustrade/fence to be solid or obscured glazed for the life of the development. It should also be noted that following a referral to Council's Heritage Officer, conditions have been recommended to increase the northern side setback of the pool to 2m to allow for more landscaping which will further assist to mitigate privacy impacts.

No.62 Hudson Parade (south)

Windows

The proposed southern facade contains a number of windows which will be within 9.0m from the southern (No.62 Hudson Parade) neighbour's windows and private open space. The submitted plans and supporting documents indicate that all proposed windows on the southern elevation of the

dwelling will be obscured glazed and casement windows (to max. 45 deg opening) to allow for light and ventilation. This window treatment will mitigate potential privacy impacts. This will also be secured by conditions of consent.

Subject to recommended conditions, the privacy impacts are considered to be reasonable within a residential environment.

- *A sense of territory and safety is provided for residents.*

Comment:

The proposed development is considered capable of providing a sense of territory and safety for residents on the subject site and adjoining properties.

Having regard to the above assessment, it is concluded that the applicable outcomes of the control have been achieved. Therefore, the application is supported on merit, subject to conditions.

C1.14 Separately Accessible Structures

The Pittwater 21 DCP stipulates within Clause C1.14 that separately accessible structures may be permitted provided that they are not designed for separate habitation and do not contain any cooking facilities. The application proposes alterations and additions to provide a separately accessible lower ground floor. Within this lower ground floor a new kitchenette, including cooking facilities is proposed contrary to Clause C1.14.

In order to achieve compliance with this control, the development will be conditioned over the life of the development so to ensure the lower ground floor addition will not be used for the purposes of separate habitation including a secondary dwelling or dual occupancy. An additional condition will be applied over the life of the development to remove and prohibit the installation of cooking facilities.

In order to achieve compliance with this control, the development will also be conditioned over the life of the development so to ensure that the proposed eastern pavilion of the development (adjacent to and above the proposed garage) is not to be used for the purposes of separate habitation including a secondary dwelling or dual occupancy.

An additional condition will be applied over the life of the development to prohibit the installation of cooking and laundry facilities within this eastern pavilion.

C1.24 Public Road Reserve - Landscaping and Infrastructure

The proposed works in the road reserve have been reviewed by Council's Landscape Officer and Development Engineer and Roads Assets Officer who have raised no objections, subject to conditions.

D1.1 Character as viewed from a public place

Description of non-compliance

Clause D1.1 of the P21DCP states that parking structures should be located behind the front building line, preferably setback further than the primary building. The proposed garage would be set forward of the primary building to the Hudson Parade frontage and therefore does not comply with the

requirements of the control. Council may consider a variation for parking spaces in front of building line where site constraints limit location. With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

Merit Assessment

With regard to the consideration for a variation, the proposed development is considered against the underlying outcomes of the control as follows:

- ***To achieve the desired future character of the Locality.***

Comment:

The proposed development is considered to be appropriate within its context, consistent with the bulk and scale of surrounding development in the locality and generally in keeping with the desired future character of the locality. This is further discussed in the section of this report relating to *A4.1 Avalon Locality* of the Pittwater 21 DCP.

- ***To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing built and natural environment.***

Comment:

The western side of Hudson Parade accommodates examples of parking structures located forward of the front building line, most notably the adjoining neighbour No.62 Hudson Parade. Additionally, the subject site has an approved hardstand parking area and carport forward of the existing building. In this regard, the location of the structure will not be out of context with the established streetscape character. The garage will predominately be built over an existing driveway/hardstand area. Suitable vegetation and landscaping is retained within the front setback which will alleviate the visual impacts of the garage when viewed from the street and surrounding properties. Based on the above, it is concluded that the development responds to the spatial characteristics of the existing built and natural environment.

- ***To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.***

Comment:

The garage is sited below the established tree canopy and average eye level when viewed from the street. Further, the development will appear as single storey when viewed from the street due to the cross fall of the site away from the frontage, and the bulk and scale of the development would not appear inconsistent with surrounding development.

- ***The visual impact of the built form is secondary to landscaping and vegetation, or in commercial areas and the like, is softened by landscaping and vegetation.***

Comment:

Sufficient areas of landscaping will be retained within the front setback to facilitate plantings to

minimise the built form.

- ***High quality buildings designed and built for the natural context and any natural hazards.***

Comment:

The proposal is of a high quality design that fits within the natural context. The development was accompanied by a Geotechnical report that provided recommendations to ensure it appropriately responds to the natural hazards of the site.

- ***Buildings do not dominate the streetscape and are at 'human scale'.***

Comment:

Given the significant slope of the site, the garage would be below street level and would not dominate the streetscape and would appear "human scale". The development will not dominate the streetscape of the locality.

- ***To preserve and enhance district and local views which reinforce and protect the Pittwater's natural context.***

Comment:

The proposal is not anticipated to result in unreasonable view loss from the road. The works will be located behind (eastward) of the existing dwelling and the front of the site includes dense screen vegetation and canopy trees which filter existing views.

Having regard to the above assessment, it is concluded that the applicable outcomes of the control have been achieved. Therefore, the application is supported on merit.

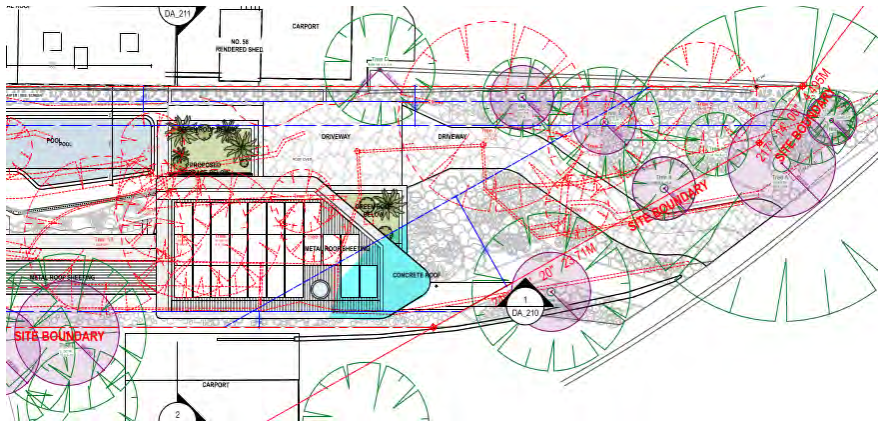
D1.8 Front building line

Description of Variation

Clause D1.8 of the P21DCP requires development (other than driveways, fences or retaining walls) to be setback at least 6.5m from the front boundary or the established building line, whichever is greater.

- The proposed garage will have a front setback of 2.3m - 8.7m
- The proposed new upper floor addition will have front setback of 2.3m (entry roof) and between 3.3m - 14m for the dwelling addition

The area which protrudes in front of the 6.5m requirement is highlighted in blue in figure 1 below:



It should be noted that the site is an irregular shaped block with a obtuse angled frontage as demonstrated in the figure above.

It should also be noted that the existing house on the subject site has been identified as having potential heritage significance. As such, in order to retain the built form characteristics of the existing dwelling, the proposed additions have been situated closer to the front boundary to retain a degree of separation between the existing house.

Merit Consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- ***To achieve the desired future character of the Locality.***

Comment:

The proposed development is considered to be appropriate within its context, consistent with the bulk and scale of surrounding development in the locality and generally in keeping with the desired future character of the locality. This is further discussed in the section of this report relating to A4.1 Avalon Locality of the Pittwater 21 DCP.

- ***The amenity of residential development adjoining a main road is maintained.***

Comment:

The subject site adjoins a local road, therefore, this outcome is not applicable.

- ***Vegetation is retained and enhanced to visually reduce the built form.***

Comment:

Whilst there is some tree removal required as part of the development, multiple significant canopy trees are proposed to be retained in order to visually reduce the built form. The application is also

supported by a landscape plan, which demonstrates an enhancement of vegetation and landscaping to screen and soften the resultant built form. The application has been reviewed by Council's Bushland and Biodiversity Officer and Landscape Officer who have raised no objection to the proposal subject to recommended conditions and replacement planting. Overall, retained and proposed vegetation and the conditioned replacement planting would appropriately break up the building massing and reduce the visual impact of the proposal. Sufficient landscaped area has been retained along the frontage of the site to accommodate plantings to minimise the built form.

- ***Vehicle manoeuvring in a forward direction is facilitated.***

Comment:

A turning bay has been provided to facilitate vehicle maneuvering in a forward direction on Hudson Parade.

- ***To encourage attractive street frontages and improve pedestrian amenity.***

Comment:

The development will appear as single storey when viewed from the street due to the cross fall of the site away from the frontage, and the bulk and scale of the development would not appear inconsistent with development along the low side of Hudson Parade. Sufficient landscaped area has been retained along the frontage of the site to accommodate plantings to minimise the built form and maintain pedestrian amenity.

- ***To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment.***

Comment:

The western side of Hudson Parade accommodates examples of structures located forward of the front building line, most notably the adjoining neighbour No.62 Hudson Parade. Additionally, the subject site has an approved hardstand parking area within the front setback. The area and width of the structures within the front setback will be minimal, and the vast majority of the front setback area will be retained as landscaped area. Suitable vegetation and landscaping is retained within the front setback which will alleviate the visual impacts of the structures when viewed from the street and surrounding properties. Based on the above, it is concluded that the development responds to the spatial characteristics of the existing built and natural environment.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant outcomes of the P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D1.9 Side and rear building line

Description of non-compliance

Clause D1.9 of the Pittwater 21 DCP requires development to be setback 2.5m from one side boundary and 1.0m from the other side boundary. The site does not have a rear setback as the foreshore building line applies for the site. For this assessment, the 2.5m control is applied to the northern side boundary, and the 1.0m applied to the southern boundary.

The development proposes the following non-compliance:

Northern side setback- 1.6m (Pool coping/fence and deck)

Southern side setback - Complies

Rear setback - FBL Applies - Complies

It should be noted that during the assessment of this application amended plans were received which increased the northern side setback of the "games room" from 1m to 2.5m and increased the northern side setback of the pool coping and deck from 1m to 1.6m. The height of this pool deck/coping was also lowered 500mm.

It should also be noted that following a referral to Council's Heritage Officer, conditions have been recommended to increase the northern side setback of the pool to 2.0m to allow for more landscaping and for the proposal to present within a greater landscaped setting.

Merit Consideration

- ***To achieve the desired future character of the Locality.***

Comment

The proposed development is considered to be appropriate within its context, consistent with the bulk and scale of surrounding development in the locality and generally in keeping with the desired future character of the locality.

- ***The bulk and scale of the built form is minimised.***

Comment

The pool deck and fence will be well within building height and envelope requirements. The floor level of the deck/coping will be less than 1m above existing ground level and will be of minimal bulk. Subject to conditions, requiring a 2m setback from the northern boundary, suitable areas of landscaping along the side setback will assist to minimise the perceived bulk of the structure from the adjoining neighbour.

- ***Equitable preservation of views and vistas to and/or from public/private places. To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.***

Comment

The proposed development adequately preserves views and vistas to and from public and private places for the reasons detailed in the section of this report relating to Clause C1.3 View Sharing of the P21 DCP. The side setback non-compliance will not result in unreasonable view loss.

- ***To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.***

Comment

It is considered that the proposal provides adequate spatial separation between adjoining buildings. The application has demonstrated that the proposal will not have an unreasonable impact with regards to solar access. The adjoining properties will maintain solar access in accordance with the DCP requirements. The matter of privacy has been addressed elsewhere within this report in detail (refer Clause C1.5) and it is considered no unreasonable privacy impacts would occur as a result of the development (subject to conditions). Furthermore, subject to conditions requiring a 2m setback from the northern boundary, the proposal would allow for suitable landscaping along side boundaries to minimise the visual impact of the development to the adjoining neighbour to assist in the preservation of residential amenity.

- ***Substantial landscaping, a mature tree canopy and an attractive streetscape.***

Comment

The proposed development will be softened by existing and proposed landscaping as seen from the street, waterway, public reserve and adjoining properties. The application is supported by a landscape plan, which demonstrates an enhancement of vegetation and landscaping to screen and soften the resultant built form. The application has been reviewed by Council's Bushland and Biodiversity officer and Landscape Officer who have raised no objection to the proposal subject to recommended conditions.

- ***Flexibility in the siting of buildings and access.***

Comment

The proposed development is sited with varying setbacks, which ensure appropriate articulation and modulation of built form. Despite non-compliance in small areas, the proposal is considered to be an appropriate response to the development of the site. Adequate pedestrian access to the site is maintained.

- ***Vegetation is retained and enhanced to visually reduce the built form.***

Comment

Whilst there is some tree removal required as part of the development, multiple significant canopy trees are proposed to be retained in order to visually reduce the built form. The application has been reviewed by Council's Bushland and Biodiversity Officer and Landscape Officer who have raised no objection to the proposal subject to recommended conditions and replacement planting. Overall, retained and proposed vegetation and the conditioned replacement planting would appropriately break up the building massing and reduce the visual impact of the proposal.

- ***A landscaped buffer between commercial and residential zones is achieved.***

Comment

N/A the subject site does not adjoin a commercial zoned area.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance

D1.11 Building envelope

Description of non-compliance

The clause stipulates that buildings are to be projected at 45 degrees from 3.5m above the existing ground level, measured from the side boundaries.

The proposed development extends beyond the prescribed building envelope along the southern side elevation, as indicated in the figure below.



Figure 1 - Proposed building envelope non-compliance on the southern elevation (highlighted in green).

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- ***To achieve the desired future character of the Locality.***

Comment:

The proposed development is considered to be appropriate within its context, consistent with the bulk and scale of surrounding development in the locality and generally in keeping with the desired future character of the locality. This is further discussed in the section of this report relating to A4.1 Avalon Locality of the Pittwater 21 DCP.

- ***To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.***

Comment:

The proposed works are below the 8.5m height limit and is a compatible height and scale of the existing site, adjoining properties, and the wider visual catchment. The proposed non-compliance will not readily be visible as viewed from the streetscape due to its siting towards the middle/rear of the site and would be below road level. The proposed dwelling additions would be generally consistent with the form of the existing dwelling when viewed from Hudson Parade. Further, the development will appear below the tree canopy when viewed from the street due to the cross fall of the site away from the frontage. The proposed development is generally set below the height of the trees adjoining the site and in the locality.

- ***To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.***

Comment:

The proposal is designed to integrate with the existing dwelling. The proposed development involves modest excavation works, is set below the general tree canopy height, is below the required building height. Proposed landscaping, in conjunction with existing and required landscaping by recommended conditions contained within this report, will assist to visually screen the bulk and scale of the built form and integrate the built form into the landscape. The proposed tree removal has been reviewed by Council's Bushland & Biodiversity and Landscape Officers who have raised no objection subject to replacement planting. The proposal is also supported by a Flora and Fauna Assessment Report which concludes that:

"It is not anticipated that any threatened flora or fauna will be significantly impacted by the proposed development as long as the impact mitigation measures outlined in this report, are to implemented to reduce impacts to native vegetation and fauna where possible."

- ***The bulk and scale of the built form is minimised.***

Comment:

The proposed development exhibits a compliant building height and proposes sufficient building separation. Furthermore, the proposed design of the first floor extension will compliment the existing dwelling. Therefore, the bulk and scale of the built form has been adequately minimised.

- ***Equitable preservation of views and vistas to and/or from public/private places.***

Comment:

The proposed development adequately preserves views and vistas to and from public and private places for the reasons detailed in the section of this report relating to Clause C1.3 View Sharing of the P21 DCP. The building envelope non-compliance is not anticipated to result in unreasonable view loss.

- ***To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.***

Comment:

It is considered that the proposal provides adequate spatial separation between adjoining buildings. The application has demonstrated that the proposal will not have an unreasonable impact with regards to solar access. The adjoining properties will maintain solar access in accordance with the DCP requirements. The matter of privacy has been addressed elsewhere within this report in detail (refer Clause C1.5) and it is considered no unreasonable privacy impacts would occur as a result of the development (subject to conditions).

- ***Vegetation is retained and enhanced to visually reduce the built form.***

Comment:

Whilst there is some tree removal required as part of the development, multiple significant canopy trees are proposed to be retained in order to visually reduce the built form. The application has been reviewed by Council's Bushland and Biodiversity Officer and Landscape Officer who have raised no objection to the proposal subject to recommended conditions and replacement planting. Overall, retained vegetation and the conditioned replacement planting would appropriately break up the building massing and reduce the visual impact of the proposal.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D1.14 Landscaped Area - Environmentally Sensitive Land**Description of non-compliance**

The control requires a minimum of 60% (743.4sqm) of the total site to be landscaped area.

The proposed development provides **54%** (677sqm) of the total site area as landscaped area, which represents a variation of 9%.

Upon achievement of the objectives of the Control, the variations provision allows for up to 6% of the site to be impervious landscape treatment provided such areas are used for outdoor recreational purposes only. Upon achievement of the aforementioned variation, the landscape area total would increase to 60%.

It should also be noted that following a referral to Council's Heritage Officer, conditions have been recommended to increase the northern side setback of the pool to 2m to allow for more landscaping and for the proposal to present within a greater landscaped setting. This will further increase the landscaped area of the site.

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying objectives of the Control as follows:

- ***Achieve the desired future character of the Locality.***

Comment:

The proposed development is considered to be appropriate within its context, consistent with the bulk and scale of surrounding development in the locality and generally in keeping with the desired future character of the locality. This is further discussed in the section of this report relating to A4.1 Avalon Locality of the Pittwater 21 DCP.

- ***The bulk and scale of the built form is minimised.***

Comment:

The site will retain a landscaped setting surrounding a built structure, which is compatible with the surrounding developments in the immediate vicinity, and within the wider community of Avalon Beach. The proposed development exhibits a compliant building height and proposes sufficient building separation and would be generally consistent with the built form of the existing dwelling. The submitted landscape plan details new and existing trees and vegetation to assist in reducing the perceived bulk and scale of the development from the public domain and adjacent properties. In this instance, the proposed development is considered to achieve compliance with this outcome.

- ***A reasonable level of amenity and solar access is provided and maintained.***

Comment:

It is considered that the proposal provides adequate spatial separation between adjoining buildings. The application has demonstrated that the proposal will not have an unreasonable impact with regards to solar access. The adjoining properties will maintain solar access in accordance with the DCP requirements. The matter of privacy has been addressed elsewhere within this report in detail (refer Clause C1.5) and it is considered no unreasonable privacy impacts would occur as a result of the development (subject to conditions). Furthermore, the proposal would retain suitable landscaping along the side boundaries and within the foreshore area to minimise the visual impact of the development to the adjoining neighbour to assist in the preservation of residential amenity.

- ***Vegetation is retained and enhanced to visually reduce the built form.***

Comment:

Whilst there is tree removal required as part of the development, multiple significant canopy trees are proposed to be retained in order to visually reduce the built form. An Arboricultural Impact Assessment and Flora & Fauna Report has been submitted as part of the application which recommend a series of mitigation and management measures to protect retained vegetation. The application is also supported by a landscape plan, which demonstrates an enhancement of vegetation and landscaping to screen and soften the resultant built form. The application has been reviewed by Council's Bushland and Biodiversity Officer and Landscape Officer who have raised no objection to the proposal subject to recommended conditions and replacement planting. Overall, retained and proposed vegetation and the conditioned replacement planting would appropriately break up the building massing and reduce the visual impact of the proposal.

It is of further note that during the assessment of the application, amended plans were received which deleted the proposed boatshed to enable the retention of trees within the foreshore area.

- ***Conservation of natural vegetation and biodiversity.***

Comment:

As above, the proposal involves tree removal to facilitate the development, including one spotted gum tree. The proposal is supported with a Flora and Fauna Assessment (Narla Environmental September 2023), which has concluded that a significant impact to the endangered ecological community is unlikely. The proposal (as amended) seeks to retain other spotted gum tree located on and adjoining the site. The application is also supported by a landscape plan, which demonstrates an enhancement of natural vegetation. The application has been reviewed by Council's Bushland and Biodiversity Officer and Landscape Officer who have raised no objection to the proposal subject to recommended conditions and replacement planting. Overall, retained and proposed vegetation and the conditioned

replacement planting ensure that this objective is achieved.

- ***Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels.***

Comment:

The proposal has been reviewed by Council's Development Engineer and Water Management Officer, having regard to provisions for stormwater management and has raised no objection subject to conditions included in the recommendation of this report. It is considered the pervious surface within the property is capable of reducing stormwater runoff, preventing soil erosion and siltation of natural drainage channels.

- ***To preserve and enhance the rural and bushland character of the area.***

Comment:

As above, the proposed development involves tree removal, but is not considered to impact core bushland and the proposed landscaping and tree replacements will ensure no significant net loss of vegetation. The application is supported by a landscape plan, which demonstrates an enhancement of vegetation and landscaping to screen and soften the resultant built form. During the assessment of the application, amended plans were received which deleted the proposed boatshed to enable the retention of trees within the foreshore area. The application has been reviewed by Council's Bushland and Biodiversity officer and Landscape Officer who have raised no objection to the proposal subject to recommended conditions.

- ***Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management.***

Comment:

The on-site capacity of pervious surface is considered capable of providing infiltration of water to the water table, minimising run-off and assisting with stormwater management.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$22,064 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,206,369.

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 development application seeks consent for the construction of alterations and additions to an existing dwelling including a new swimming pool.

The application is referred to the Development Determination Panel (DDP) as eight (8) objections were received in response to the notification.

The concerns raised in the objections have been addressed and resolved by amended plans and additional information, as well as imposed conditions of consent.

The critical assessment issues include heritage; tree removal and biodiversity; landscaped area; front and side setbacks; building envelope; privacy; view sharing; solar access; and character.

Subject to the recommended conditions of consent, it is considered that the amended 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.

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2022/1715 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 56 DP 7794, 60 Hudson Parade, CLAREVILLE, 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_003	C	Site Plan	Bennett Murada Architects	28/08/2023
DA_004	C	Demolition Plans - Lower Ground + Ground	Bennett Murada Architects	28/08/2023
DA_005	C	Demolition Plans - Level 01 + Roof	Bennett Murada Architects	28/08/2023
DA_100	C	Proposed Lower Ground Floor Plan	Bennett Murada Architects	28/08/2023
DA_101	C	Proposed Ground Floor Plan	Bennett Murada Architects	28/08/2023
DA_102	C	Proposed First Floor Plan	Bennett Murada Architects	28/08/2023
DA_103	C	Proposed Roof Plan	Bennett Murada Architects	28/08/2023

DA_112	C	Cut and Fill Plan	Bennett Murada Architects	28/08/2023
DA_200	C	East + West Elevations	Bennett Murada Architects	28/08/2023
DA_201	C	North + South Elevations	Bennett Murada Architects	28/08/2023
DA_210	C	Longitudinal Section	Bennett Murada Architects	28/08/2023
DA_211	C	Cross Section	Bennett Murada Architects	28/08/2023
DA_212	A	Elevation + Section	Bennett Murada Architects	07/09/2023
DA_400	B	Calculations - Landscape Areas	Bennett Murada Architects	28/08/2023
DA_00	B	Schedules of Colours and Materials	Bennett Murada Architects	28/08/2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Flora and Fauna Assessment Report	1.0	Narla Environmental Pty Ltd	01/09/2023
BASIX Certificate (A470828)		Bennett Murada Architects	26/09/2023
Arboricultural Impact Assessment Report	Rev.B	Martin Peacock Tree Care	26/09/2023
Geotechnical Investigation Report	R.001.Rev0	Douglas Partners Pty Ltd	02/08/2022

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	31/10/2022

(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 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.

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. No Works on Adjoining Land

All approved works are to be located entirely within the subject site. No Approval is granted under this consent for any works within or on the property boundaries of adjoining privately owned land.

Reason: To ensure compliance with the terms of this consent.

6. No Approval for works within the foreshore area

No works are permitted within the foreshore area and this consent does not authorise or regularise existing development within the foreshore area.

Reason: To ensure compliance with the relevant Local Environmental Plan and to ensure the work is carried out in accordance with the determination of Council and approved plans.

7. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
- 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,
 - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of

jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$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 sewerage 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.

8. **No Approval for Secondary Dwelling**

No approval is granted or implied under this Development Consent for the use of any part of the dwelling house for the purpose of a secondary dwelling or separate occupancy. Built in cooking facilities are not permitted to be installed, other than those shown in the designated kitchen area.

Reason: To ensure compliance with the terms of this consent.

FEES / CHARGES / CONTRIBUTIONS

9. **Policy Controls**

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$22,063.69 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$2,206,369.00.

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.

10. **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

11. **Compliance with Ecologist's Recommendations – Pre-construction**

All pre-construction biodiversity-related measures specified in Table 10 of the Flora and Fauna Assessment Report (Narla Environmental September 2023) and these conditions of consent are to be implemented at the appropriate stage of the development. Compliance with pre-construction measures are to be certified by the Project Ecologist and provided to the Certifier prior to issue of the Construction Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.

12. **No Clearing of Vegetation**

Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.

Details demonstrating compliance are to be submitted to the Certifier prior to issue of Construction Certificate.

Reason: To protect native vegetation.

13. **Amendment of Landscape Plans**

The submitted Landscape Plan is to be amended in accordance with the following:

- Deletion of the majority of plant species as they are not characteristic of the Pittwater Spotted Gum endangered ecological community, including any native cultivars.
- Replacement with species to ensure that at least 80% of any new planting incorporates native vegetation (as per species listed for the Pittwater Spotted Gum Endangered Ecological Community)
- Provision of four native replacement trees including one each of *Eucalyptus crebra* (Narrow leaved Ironbark), *Golchidion ferdinandi* (Cheese Tree), *Corymbia maculata* (Spotted Gum), and *Allocasuarina torulosa* (Forest Sheoak).
- Incorporation of the increased side setback to the swimming pool and associated redesign of pool edge.

The amended Landscape Plan is to be certified by a qualified landscape architect and provided to the Certifier prior to issue of the Construction Certificate.

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site.

14. **Traffic Management and Control**

The Applicant is to submit an application for Traffic Management Plan to Council for approval prior to issue of the Construction Certificate. The Traffic Management Plan shall be prepared to TfNSW standards by an appropriately certified person.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process.

15. **Stormwater Disposal**

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent, prepared by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to the rear to Pittwater.

Details demonstrating compliance are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for disposal and stormwater management arising from the development.

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 prepared by Douglas Partners dated 2/8/2022 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

17. **Erosion and Sediment Control Plan**

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities)
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected.
- North point and scale.

Details demonstrating compliance are to be submitted to the Principal Certifier for approval prior to the issue of the Construction Certificate.

Reason: To protect the receiving environment.

18. **Water Quality Management**

The applicant must install a sediment control pit that captures organic matter and coarse sediments prior to discharge of stormwater from the land. All stormwater treatment measures must make provision for convenient and safe regular inspection, periodic cleaning, and maintenance.

Details demonstrating compliance are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

Reason: Protection of the receiving environment.

19. **Pool Design and Setback**

Amended plans shall be issued to the Certifier prior to the issue of a Construction Certificate to include the following details:

- An increase to the pool's northern wall outside edge setback to 2m with the additional setback area replaced with soft landscaping; and
- The pool amended to a straightened edge design.

Details demonstrating compliance with this condition are to be provided to the Principal Certifying Authority.

Reason: To provide an appropriate pool and landscaping design to the Rickard House

20. **Amendments to the approved plans**

The following amendments are to be made to the approved plans:

- a) **Lower Ground Floor Kitchenette/Cooking Facilities:** The cooking facilities within the "lower ground floor Kitchenette" shall be deleted from the plans.
- b) **Ridge height:** The annotation "PROP RIDGE 16.35" and "BUT RAISED BY 350MM" on the northern elevation plan (DA_201 Rev.C) shall be deleted from the plans.
- c) **Southern elevation windows:** All proposed windows on the southern elevation shall be fitted with obscured glazing be designed to be fixed (non-operable) or casement with a maximum opening of less than 45 degrees.
- d) **Swimming Pool Balustrading/fence -** The proposed swimming pool to incorporate solid balustrading/fencing for the entire length of the northern elevation. This balustrading is to be constructed of nontransparent material or opaque glazing measured at a height of at least 1.0m above the finished floor level.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development.

21. **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.

22. **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.

23. Submission Roads Act Application for Civil Works in the Public Road

The Applicant is to submit an application for approval for infrastructure works on Council's roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include four (4) copies of Civil Engineering plans for the design of vehicular crossing and retaining walls in the road reserve which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer. The design must include the following information:

1. A vehicular crossing 3.5 meters wide to be constructed in accordance with Council's standard drawing Maximum Low Skew.
2. Engineering Long sections at both edges and centerline of the driveway.
3. Structural details for the retaining structures along both sides of the roadway.
4. Sight distances are to be in accordance with AS2890.1.
5. The application is to include a geotechnical report that is prepared by an appropriately qualified Geotechnical Engineer to assess all proposed works including road works and retaining walls
6. A services plan indicating all services in the road reserve. Where any services are to be adjusted as a result of the works, approval from the relevant service authority is to be provided

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

An approval is to be submitted to the Certifier prior to the issue of the Construction Certificate

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.

24. Vehicle Driveway Gradients

The Applicant is to ensure driveway gradients within the private property are not to exceed a

gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility. Access levels across the road reserve are to comply with the allocated vehicle profile detailed in this consent.

Details demonstrating compliance are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

Reason: To ensure suitable vehicular access to private property.

25. **Structural Adequacy and Excavation Work**

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
- (b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To provide public and private safety.

26. **Photographic Archival Recording**

A full photographic archival recording is to be made of the site (including interiors and exteriors), surrounding structures and buildings as well as their setting (including any major landscape elements). This record is to be prepared generally in accordance with the guidelines issued by NSW Heritage and must be submitted to Council's Heritage Officer for approval, prior to the issue of a Construction Certificate.

The photographic record should be made using digital technology and must include:

- Location of property, date of survey and author of survey;
- A site plan at a scale of 1:200 showing all structures and major landscape elements;
- Floor plans of any buildings at a scale of 1:100;
- Photographs which fully document the site cross referenced in accordance with recognised archival recording practice to catalogue sheets.

Details demonstrating compliance with this condition are to be provided to the Principal Certifying Authority.

Reason: To provide an archival photographic record of this site prior to the commencement of any works.

27. **Engagement of Project Ecologist**

A Project Ecologist is to be employed for the duration of the approved works to ensure all biodiversity protection measures are carried out in accordance with the Narla Environmental Pty Ltd Report (reference).

The Project Ecologist must have one of the following memberships / accreditation:

- Practising member of the NSW Ecological Consultants Association (<https://www.ecansw.org.au/find-a-consultant/>) OR

- Biodiversity Assessment Method Accredited Assessor under the relevant legislation (<https://customer.lmbc.nsw.gov.au/assessment/AccreditedAssessor>)

Evidence of engagement of the Project Ecologist is to be provided to the Certifier prior to issue of Construction Certificate.

Reason: To protect native vegetation and wildlife.

28. **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.

29. **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.

30. **Construction site management plan**

Before the issue of a construction certificate, the applicant must ensure a construction site management plan is prepared before it is provided to and approved by the certifier. The plan must include the following matters:

- location and materials for protective fencing and hoardings to the perimeter on the site
- provisions for public safety
- pedestrian and vehicular site access points and construction activity zones
- details of construction traffic management, including proposed truck movements to and from the site and estimated frequency of those movements, and measures to preserve pedestrian safety in the vicinity of the site
- protective measures for on-site tree preservation (including in accordance with AS 4970-2009 Protection of trees on development sites and Council's DCP, if applicable) and trees in adjoining public domain (if applicable)
- details of any bulk earthworks to be carried out
- location of site storage areas and sheds
- equipment used to carry out all works
- a garbage container with a tight-fitting lid
- dust, noise and vibration control measures
- location of temporary toilets.

The applicant must ensure a copy of the approved construction site management plan is kept on-site at all times during construction.

Reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.

31. **Construction Traffic Management Plan**

A Construction Traffic Management Plan (CTMP) and report shall be prepared prior to issue of any Construction Certificate.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- Details for loading and unloading of materials
- Details for maintaining access to adjacent properties
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Location of Parking
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- Take into consideration the combined construction activities of other development in the surrounding area.
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- Proposed protection for Council and adjoining properties

The Construction Traffic Management Plan shall be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

32. **Waste Management Plan**

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Pittwater 21 Development Control Plan and Council's Waste Management Guidelines.

Details demonstrating compliance must be provided to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

33. **Project Arborist**

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged prior to any commencement of works on site to provide tree protection measures in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, and in particular:

a) section 9.0, including 9.1 to 9.13 inclusive.

All tree protection measures specified must:

- a) be in place before work commences on the site, and
- b) be maintained in good condition during the construction period, and
- c) remain in place for the duration of the construction works.

The Project Arborist shall provide certification to the Certifier that all tree protection measures under AS4970-2009 have been satisfied, and the recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

Note:

Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: Tree protection.

34. **Tree Removal Within the Property**

This consent approves the removal of existing prescribed trees on the subject site as identified in the Arboricultural Impact Assessment, approved Plans, or as listed below:

- a) T1, T2, T9, T10, and T11,
- 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.

35. **Pre-Construction Dilapidation Report**

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifier prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

- 58 Hudson Parade, Clareville
- 62 Hudson Parade, Clareville

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifier and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifier must be satisfied that the requirements of this condition have been met prior to commencement of any works. If access is denied, then no dilapidation report is required.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

DURING BUILDING WORK

36. 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.

37. 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 as complaint to AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment and/or Project Arborist as applicable.

Reason: Tree and vegetation protection.

38. **Compliance with Ecologist's Recommendations – During Construction**

All biodiversity-related measures are to be implemented during construction in accordance with those specified in Table 10 of the Flora and Fauna Assessment Report (Narla Environmental September 2023).

Compliance with these measures is to be certified by the Project Ecologist in writing to the Principal Certifier.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.

39. **Dead or Injured Wildlife**

If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife.

40. 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.

41. 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.

42. 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.

43. 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.

44. 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.

45. **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.

46. **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.

47. **Civil Works Supervision**

The Applicant shall ensure all civil works approved in the Section 138 approval are supervised by an appropriately qualified and practising Civil Engineer.

Details demonstrating compliance are to be submitted to the Principal Certifier and/or Roads Authority.

Reason: To ensure compliance of civil works with Council's specification for engineering works.

48. **Traffic Control During Road Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual (<http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf>) and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

49. **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.

50. **Stockpiling of Topsoil**

During site excavation, topsoil which is to be used in later landscape works is to be stockpiled on site and stabilised during construction works. Stockpiles are to be stored outside of hazard areas and not located within the dripline of existing trees which are to be retained.

Reason: To ensure protection and retention of the Urban Forest/Natural Environment.

51. **Traffic Control During Road Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual (http://www.rms.nsw.gov.au/businessindustry/partners_suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf) and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

52. **Implementation of Construction Traffic Management Plan**

All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

Reason: To ensure compliance of the developer/builder in adhering to the Construction Traffic Management procedures agreed and are held liable to the conditions of consent.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

53. **Landscape Completion**

Landscape works are to be implemented in accordance with the approved Landscape Plans prepared by Arcadia dated August 2023 and referenced as sheets 02 to 29, and detailed plans 000, 4000, 401, 601 and specification, all issue E, dated 23.08.23, and inclusive of the following conditions:

- a) landscape works are to be contained within the legal property boundaries,
- b) any landscape works proposed for the road reserve shall be included as part of the s.138 works within the road reserve application, for approval or otherwise,
- c) tree, shrub and groundcover planting shall be installed as indicated on the approved Landscape Plans,
- d) all *Pennisetum* species shall be deleted and replaced with non spreading species.

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.

54. **Condition of Retained Vegetation - Project Arborist**

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Principal Certifier, assessing the health and impact on all existing trees required to be retained on the approved Plans or as listed in the Arboricultural Impact Assessment, including the following information:

- a) compliance to any Arborist recommendations for tree protection generally and during excavation works,
- b) extent of damage sustained by vegetation as a result of the construction works,
- c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree and vegetation protection.

55. **Compliance with Ecologist's Recommendations – Post Construction**

All biodiversity-related measures are to be implemented at the appropriate stage of development in accordance with those specified in Table 10 of the Flora and Fauna Assessment Report (Narla Environmental September 2023).

Satisfactory establishment/initiation of post-construction measures is to be certified 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.

56. **Protection of Habitat Features – Certified by Ecologist**

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.

Written details demonstrating compliance are to be certified by the Project Ecologist and provided to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To protect wildlife habitat.

57. **Fencing for Wildlife Passage**

Any new permanent fencing (with the exception of swimming pool fencing) is to be made passable to native fauna through the provision of access gaps or raised fencing to provide appropriate ground clearance. Any access gaps are to be a minimum of 150mm wide x 100mm high at ground level and spaced at a minimum of 6m intervals.

Details demonstrating compliance are to be provided the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To preserve wildlife corridors.

58. **Replacement of Canopy Trees**

At least four locally native canopy trees are to be planted on site to replace protected trees approved for removal. Species are to include one each of *Eucalyptus crebra* (Narrow leaved Ironbark), *Golchidion ferdinandi* (Cheese Tree), *Corymbia maculata* (Spotted Gum), and

Allocasuarina torulosa (Forest Sheoak).

Tree plantings are to be retained for the life of the development and/or for their safe natural life. Trees that die or are removed must be replaced with another locally native canopy tree.

Replacement plantings are to be certified as being completed in accordance with these conditions of consent by a qualified landscape architect, and details submitted to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To establish appropriate native landscaping.

59. **No Weeds Imported On To The Site**

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan 2019 – 2023) 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.

60. **Priority Weed Removal and Management**

All Priority weeds as specified in the Northern Beaches Local Weed Management Plan 2019 – 2023) within the development footprint are to be removed.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To reduce the risk of site works contributing to spread of Priority weeds.

61. **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.

62. **Post-Construction Dilapidation Report**

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

- Compare the post-construction report with the pre-construction report,
- Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To maintain proper records in relation to the proposed development.

63. **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.

64. **Retaining wall**

The retaining wall works shall be certified as compliant with all relevant Australian Standards and Codes by a Structural Engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any final Occupation Certificate.

Reason: Public and Private Safety

65. **Acoustic Treatment of Pool Filter**

The pool filter is to be acoustically treated so that it does not emit any noise louder than 5dB (A) above background noise at the nearest residential receiver. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Occupation Certificate.

Reason: To ensure the acoustic amenity of the neighbouring residents.

66. **Retaining wall**

The retaining wall works in the road reserve shall be certified as compliant with all relevant Australian Standards and Codes by a Structural Engineer. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: Public and Private Safety

67. **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.

68. **Environmental Reports Certification**

Written certification from a suitably qualified person(s) shall submit to the Principal Certifier and Northern Beaches Council, stating that all the works/methods/procedures/control measures/recommendations approved by Council in the following reports have been completed:

(a) Flora and Fauna Assessment Report, dated 01/09/2023, prepared by Narla Environmental Pty Ltd.

(b) Arboricultural Impact Assessment Report, dated 26/09/2023, prepared by Martin Peacock Tree Care

(c) Geotechnical Investigation Report, dated 02/08/2022, prepared by Douglas Partners Pty Ltd

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the

issue of an Occupation Certificate.

Reason: To ensure compliance with standards.

69. **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.

70. **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

71. **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 Plans and any conditions of consent.

The approved landscape planted areas shall in perpetuity remain as planting under the development consent, and shall not be replaced with any hard paved surfaces or structures.

Reason: To maintain local environmental amenity.

72. **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.

73. **Replacement of Canopy Trees**

Tree replacement plantings required under this consent are to be retained for the life of the development and/or for their safe natural life.

Trees that die or are removed must be replaced with another locally native canopy tree.

Reason: To replace locally native trees.

74. **Maintenance of Stormwater Treatment Measures**

Stormwater treatment measures must be maintained at all times in accordance with manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

Northern Beaches Council reserves the right to enter the property and carry out appropriate maintenance of the device at the cost of the property owner.

Reason: To protect the receiving environment.

75. **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.

76. **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.

77. **Non-trafficable roof**

The area labelled "Green Roof " on the approved plans (DA_102 Rev.C) shall be non-trafficable for the life of the development or unless otherwise approved by Northern Beaches Council.

Reason: To ensure the visual privacy of the neighbouring residents.

78. **Plant Noise**

Any plant equipment associated with the development must be installed and operated at times so as not to cause 'offensive noise'. It must be demonstrated that the noise level will not exceed 5dBA above background noise when measured from the nearest property boundary, as defined by the Protection of the Environments Operation Act 1997.

Reason: To ensure compliance with legislation and to protect the acoustic amenity of neighbouring properties.

79. **Use of Eastern Pavilion**

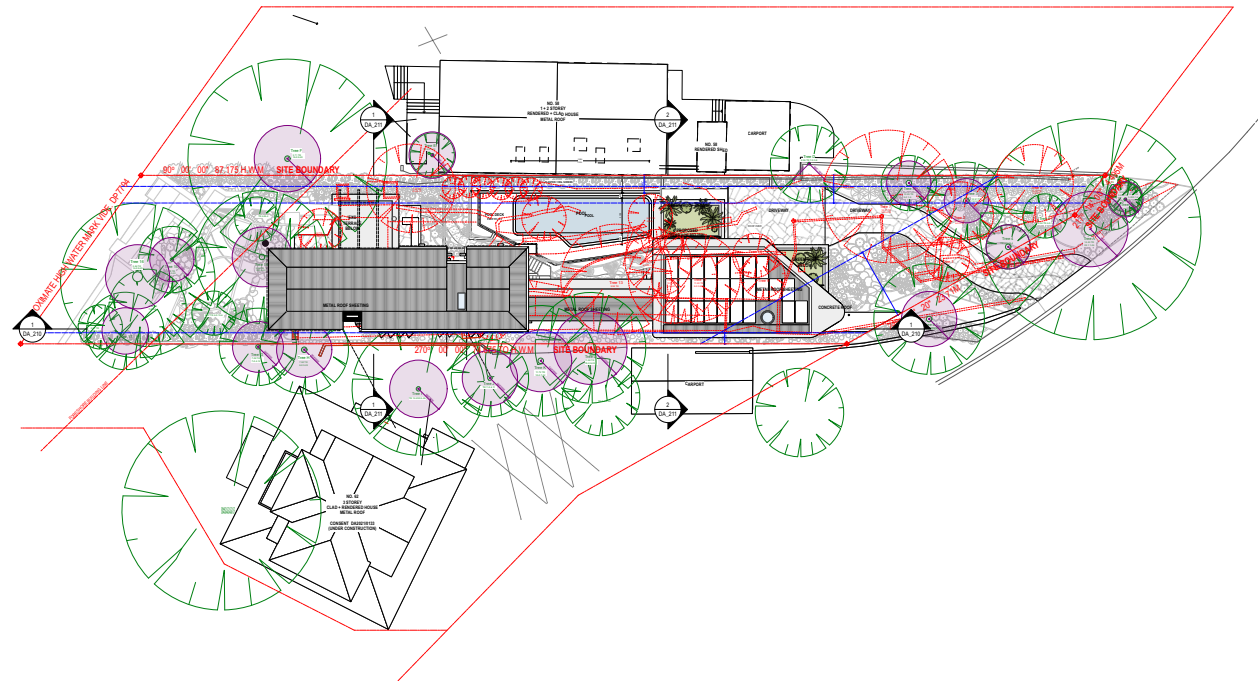
The proposed eastern pavilion of the development (adjacent to and above the proposed garage) is not to be used for the purpose of separate habitation (including a secondary dwelling or dual occupancy) and is not to contain any cooking facilities.

Reason: To ensure that the ground floor remains ancillary to the dwelling house.

80. **Use of "Lower ground floor level"**

The proposed "Lower ground floor level" is not to be used for the purpose of separate habitation (including a secondary dwelling or dual occupancy) and is not to contain any cooking facilities.

Reason: To ensure that the ground floor remains ancillary to the dwelling house.



1m 5m 10m 22m

NOTES
THIS DRAWING IS PART OF A SET AND SHOULD BE READ IN CONJUNCTION WITH ALL OTHER DOCUMENTS. VERIFY ALL DIMENSIONS ON SITE PRIOR TO COMMENCING CONSTRUCTION OR FABRICATION. REPORT ANY DISCREPANCIES TO THE ARCHITECT FOR VERIFICATION.
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Rev.	Date	Issued By	Revision Notes
A	27/02/22	DA	DEVELOPMENT APPLICATION
B	27/02/22	DA	REVISED DA APPLICATION
C	28/02/23	DA	REVISED DA APPLICATION

LEGEND / KEY
DEMOLISHED
SETBACK
DEMOLISHED TREE
EXISTING TREE

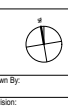


Project:
ALTS & ADS TO EXISTING HOUSE
60 HUDSON PDE, CLAREVILLE NSW 2107

Client:
OLIVER & NICOLA HARTLEY

Drawing Name:
SITE PLAN

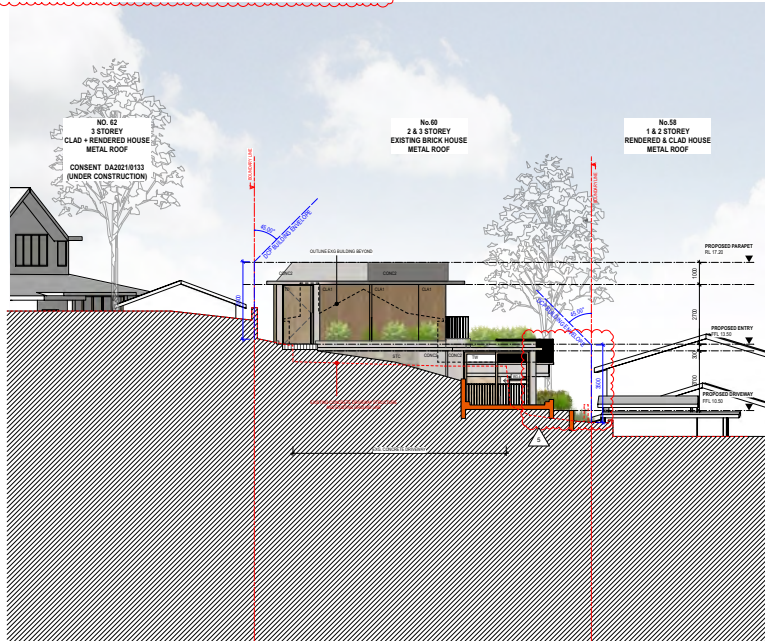
Job Number: 2130	Drawn By: LR
Scale: 1:200	Revision: C
Plot Date: 28/02/23	
Drawing Status: DA	
Drawing No: DA 003	



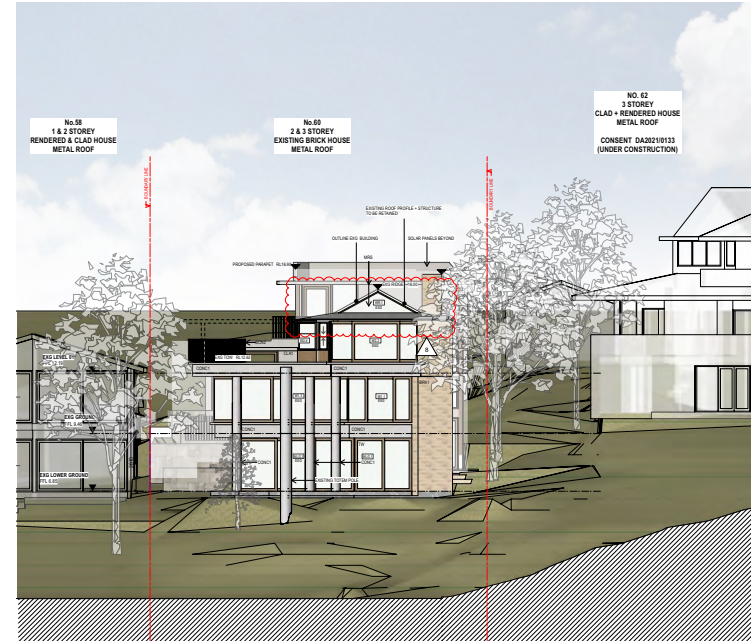
Suite 404, 1 Chandos Street, St Leonards, NSW 2065 ph:(02) 9043 9968 e:info@bennettmurda.com.au

nominated architect: Dominic Bennett 7365 (NSW)

SCHEDULE OF KEY AMENDMENTS: ROOFED DELETED	PLATFORM SETBACK INCREASED TO 2.5m
EXISTING TREES & LANDSCAPE RETAINED	KITCHEN EXTENT DECREASED & SECTION OF EXISTING WALLS RETAINED
EXISTING SECTION OF WALL RETAINED	EXISTING ROOF HEIGHT RETAINED
SETBACK TO BOUNDARY INCREASED AND POOL LAYOUT LEVEL MODIFIED	NEW SECTION OF ROOF RE-CONFIGURED
GALLERY MOVED NORTH TO INCREASE SETBACK TO BOUNDARY (2.5m)	WINDOW CONFIGURATION UPDATED



1 East Elevation
Scale: 1:100



2 West Elevation
Scale: 1:100

NOTE: REFER TO LANDSCAPE DRAWINGS FOR LANDSCAPING AND SITE GRADING DETAILS

NOTES
THIS DRAWING IS PART OF A SET AND SHOULD BE READ IN CONJUNCTION WITH ALL OTHER DOCUMENTS. VERIFY ALL DIMENSIONS ON SITE PRIOR TO COMMENCING CONSTRUCTION OR FABRICATION. REPORT ANY DISCREPANCIES TO THE ARCHITECT FOR VERIFICATION.
DO NOT SCALE DRAWINGS. FIGURED DIMENSIONS TAKE PRECEDENCE OVER SCALED DIMENSIONS. THIS DRAWING AND THE DESIGN CONTAINED HEREIN ARE PROTECTED BY COPYRIGHT. THE ARCHITECT GRANTS THE COPYRIGHT LICENSE ONLY FOR THE SPECIFIC PROJECT AND FOR THE PURPOSE SHOWN AT 'SEAL'.

Rev.	Date	Issued By	Revision Notes
A	27/02/22	SM	DEVELOPMENT APPLICATION
B	27/02/22	SM	REVISED DA APPLICATION
C	28/02/22	SM	REVISED DA APPLICATION

Legend	Key
AW	AWARD
BL	BUILDING
BL 1.2	BALUSTRADE TYPE 1.2
BL 1.3	BALCONY TYPE 1.2
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