

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 13 DECEMBER 2023

Ashleigh Sherry
Manager Business System and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 13 December 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 ON 6 DECEMBER 2023

RECOMMENDATION

That the Panel note that the minutes of the Development Determination Panel held 6 December 2023 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	DA2023/1448 - 38 BOWER STREET MANLY - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE AND ASSOCIATED WORKS
REPORTING MANAGER	Rodney Piggott
TRIM FILE REF	2023/802058
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 DA2023/1448 for Alterations and additions to a dwelling house and associated works on land at Lot 25 DP 8075, 38 Bower Street MANLY, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/1448
Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 25 DP 8075, 38 Bower Street MANLY NSW 2095
Proposed Development:	Alterations and additions to a dwelling house and associated works
Zoning:	Manly LEP2013 - Land zoned C3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	The Trustees Of The Roman Catholic Church For The Archdiocese Of Sydney James Gray Smail Tracey Anne Smail
Applicant:	Carolin Schmidt
Application Lodged:	13/10/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	19/10/2023 to 02/11/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 16.07%
Recommendation:	Approval
Estimated Cost of Works:	\$ 4,514,917.00

EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) due to a breach to the height of buildings development standard of 16.07% (1.366 metres).

No submissions were received in relation to this application.

Critical assessment issues related to height of buildings, wall height, window setbacks, pool setbacks, and the width of the garage.

The 4.6 request for the non-compliance with height standard arises from the predominant retention of the existing non-compliant structure, including its historic excavation.

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

PROPOSED DEVELOPMENT IN DETAIL

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

- Partial demolition, reconstruction and reconfiguration of the lower ground, ground and first floors, including balconies and decks,
- Reconstruction and widening of the garage to include storage space,
- New driveway,
- Landscaping works, and
- New spa.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Local Environmental Plan 2013 - 6.2 Earthworks
Manly Local Environmental Plan 2013 - 6.4 Stormwater management
Manly Local Environmental Plan 2013 - 6.5 Terrestrial biodiversity
Manly Local Environmental Plan 2013 - 6.8 Landslide risk
Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
Manly Local Environmental Plan 2013 - 6.12 Essential services

Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
 Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

SITE DESCRIPTION

Property Description:	Lot 25 DP 8075 , 38 Bower Street MANLY NSW 2095
Detailed Site Description:	The subject site consists of one allotment located on the northern side of Bower Street, Manly. The site is relatively regular in shape with a frontage of 16.27 metres along Bower Street and a maximum depth of 59.03 metres. The site has a surveyed area of 825.3m². The site is located within the C3 Environmental Management zone and accommodates a three-storey detached dwelling house with a double garage. The site steeply slopes down approximately 13 metres from south (front) to north (rear) and contains significant vegetation to the northern rear half of the site. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by multi-storey detached dwelling houses in landscaped settings. To the north is Marine Parade and the Shelly Beach Reserve foreshore.

Map:



SITE HISTORY

A search of Council's records has revealed that there are no recent 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	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, <u>Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 19/10/2023 to 02/11/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Solid Fuel/Oil Heater)	The proposal includes the addition of a wood burning fireplace and flue on the first floor. Environmental Health recommends approval subject to conditions.
Landscape Officer	The proposal is supported with regard to landscape issues. Council's Landscape Referral section have considered the application against the Manly Local Environment Plan, and the following Manly DCP 2013 controls (but not limited to): • 3.3.1 Landscaping Design • 3.3.2 Preservation of Trees or Bushland Vegetation • 4.1.5 Open Space and Landscaping, including 4.1.5.2 (c) Minimum Tree Plantings The landscape outcome of the zone C3 Environmental Management objectives include protection and management of the ecological and aesthetic landscape values, protection of tree canopies to maintain the natural scenic qualities of the foreshore, revegetate and rehabilitate the foreshore, and ensure that the bulk and scale of development integrates with the natural environment. Of the trees assessed in the Arboricultural Impact Assessment (AIA) only one will require removal and is exempt by species, therefore can be managed or removed at the discretion of the applicant without consent. All other trees and vegetation shown to be retained shall be protected during works as recommended in the AIA and subject to the imposed conditions. The landscape proposal is generally supported and all proposed planting shall be installed in accordance with the requirements outlined in the conditions of consent. All on slab landscaping shall meet Council's minimum soil depth requirements.
NECC (Bushland and Biodiversity)	The proposal seeks approval for alterations and additions to a dwelling house and associated works.

Internal Referral Body	Comments
	The comments in this referral relate to the following applicable controls and provisions: • SEPP (Resilience and Hazards) 2021 - Coastal Environment Area • Manly LEP - Clause 6.5 Terrestrial Biodiversity • Manly DCP - Clause 5.4.2 Threatened Species and Critical Habitat Lands • Manly DCP Clause 3.3.1.iv) (Landscaping in Bandicoot Habitat). The proposal has been submitted with an arboricultural impact assessment that has assessed the condition of a total of 26 trees and recommended the removal of a single tree (Tree 8) which is an exempt species. No objections are raised in relation to this removal. The property is located within known habitat for the endangered population of Long-nosed Bandicoots at North Head; as such, the development is to be accompanied by a 'test of significance' prepared in accordance with Section 7.3 of the BC Act. Given that the proposal is largely within the existing footprint, Council's Biodiversity referral body have conducted a threatened species test of significance and are satisfied that the proposed development will not represent a significant impact, subject to recommended conditions to maintain bandicoot access and mitigate construction-related impacts. The proposed landscape plan will have to be amended to avoid the inclusion of any plants identified as weeds, specifically related to <i>Pennisetum "nafray"</i> and also to provide adequate habitat and foraging opportunities in line with MDCP 3.3.1 iv). The development is designed, sited and will be managed to avoid any significant adverse environmental impact.
NECC (Coast and Catchments)	The application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, State Environmental Planning Policy (Resilience & Hazards) 2021, Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity & Conservation) 2021 and Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005. It has also been assessed against requirements of the Manly LEP and DCP. <i>Coastal Management Act 2016</i> 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

Internal Referral Body	Comments
	objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>. 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. Clauses 2.10 (coastal environment area) and 2.11 (coastal use area) do not apply as the site is also located within the Sydney Harbour catchment area. Hence, only Clause 2.12 of the SEPP R & H apply for this DA. Comment: On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by GSA Planning dated September 2023, the DA satisfies requirements under clause 2.12 of the SEPP R&H. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021. Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity & Conservation) 2021 Sydney Harbour Catchment The subject site is located within the Sydney Harbour Catchment. Hence Part 6.2 of the Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity & Conservation) 2021 will apply in assessing this DA. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by GSA Planning dated September 2023, it is determined that the relevant clauses of the Part 6.2 have been followed. Manly LEP 2013 and Manly DCP Landslide/ Landslip Hazard Management The subject site is also shown to be as "Landslide risk" on Council's Landslide Risk Map in Manly LEP 2013. As such, Clause 6.8 (Landslide Risk) of the Manly LEP 2013 and Part 4, section 4.1.8

Internal Referral Body	Comments
	Development on Sloping Sites of the Manly DCP 2013 will apply to proposed development on the site. A Geotechnical Investigation Report prepared by Assett Geotechnical Engineering Pty. Ltd. dated 26 July 2023 assessing landslide/landslip hazard has been submitted with the DA. The report assessed that the outcome of such a development would be a Low risk assessed with respect to property and the risk with respect to life would be Acceptable. As such, it is considered that the application does comply, subject to conditions, with the requirements of the Clause 6.8 (Landslide Risk) of the Manly LEP 2013 and Part 4, section 4.1.8 Development on Sloping Sites of the Manly DCP 2013. Foreshores Scenic Protection Area Management The subject site is also shown to be as "Manly Foreshores Scenic Protection Area" on Council's Foreshores Scenic Protection Area in Manly LEP 2013. As such, Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013 will apply to proposed development on the site. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by GSA Planning dated September 2023, the DA satisfies requirements under Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013. As such, it is considered that the application does comply with the requirements of the Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013.
NECC (Development Engineering)	The proposal is for alterations to the existing dwelling. The submitted stormwater plan is acceptable subject to conditions. The proposal retains the existing vehicular crossing. No objections to approval subject to conditions as recommended.
Parks, reserves, beaches, foreshore	The property adjoins Shelly Beach Reserve downslope. No physical encroachments over the site boundaries are permitted, and structures and built elements are not permitted beyond the site boundaries. All development works must ensure that surface sediment runoff and/or

Internal Referral Body	Comments
	erosion is controlled, managed and contained within the site boundaries.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development. Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A502363 dated 28 July 2023). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

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

Comment:

The northern three-quarters of the site is classified as coastal environment area. The proposed development has been reviewed by Council's Bushland and Biodiversity team, Coast and Catchments team, Landscape Officer, and Development Engineer. No objections were raised by these referral bodies, subject to recommended conditions of consent. The proposed development is not anticipated to cause adverse impact on the matters above.

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

- c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment:

Given the above, the he proposed alterations and additions are designed such that they are not anticipated to result in any unreasonable adverse impact to the matters above.

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 adverse*
 - ii) *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 whole site is classified as coastal use area. The proposed development is fully located on private land, so does not cause adverse impact upon public foreshore, beach, headland or rock platform land. The proposed development does not cause adverse impact on persons with a disability as it does not alter public access around the site beyond installation of driveways. The development is supported by shadow diagrams that demonstrate acceptable overshadowing impact. The proposed development is designed such that it does not increase wind funneling. The proposed development does not result in unreasonable view loss with respect to Clause 3.4.3 Maintenance of Views of the Manly DCP 2013. The subject site is classified as containing Aboriginal heritage significance, though no objection to the proposed development was raised by the Aboriginal Heritage Office upon review. In this way, the proposed development is demonstrably designed, sited and will be managed to avoid adverse impact. The bulk and scale of the proposed development has been considered throughout this assessment.

Division 5 General

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

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

Comment:

The proposed development is demonstrably designed and sited so as not to cause increased risk of coastal hazard on the subject site or surrounding land.

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

Chapter 4 – Remediation of Land

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

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	9.866m	16.07%	No
Floor Space Ratio	0.45:1 371.4m ²	0.424:1 350m ²	-	Yes

Compliance Assessment

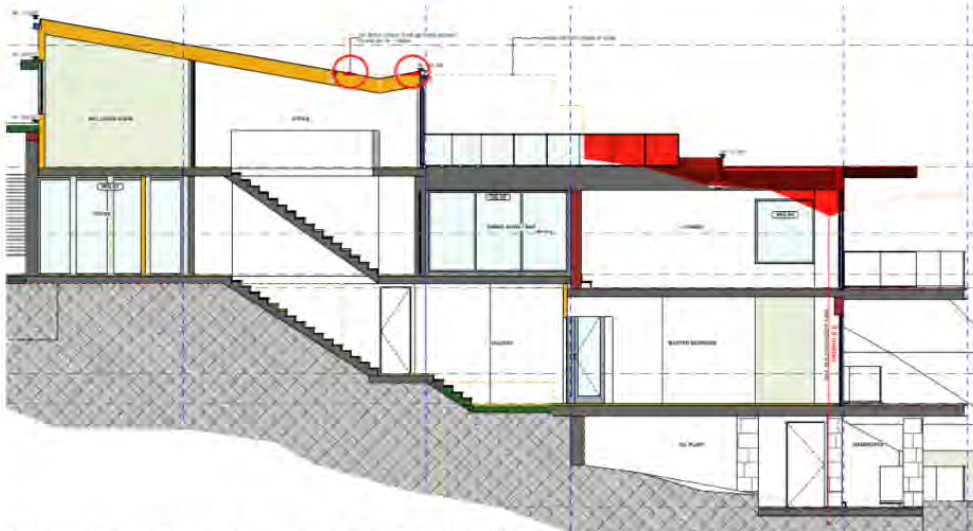
Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial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

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of Buildings
Requirement:	8.5m
Proposed:	9.866m
Percentage variation to requirement:	16.07%



Above: The proposed breaches to the height of buildings development standard, as marked in red (and circled).

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

Clause 4.3 Height of Buildings 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 Clause 4.6(3) and these are addressed as follows:

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

Comment:

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

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

Comment:

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

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

Section 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,

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

The Applicant's written request argues:

"The areas of height contravention relate to refurbishment works to the existing first floor terrace, replacement of the existing upper roof, a minor window change, and replacement of the awning, which in itself does not alter the envelope of the existing built form on the site. The non-compliances for these works relate to existing areas above the height standard, being a result of the existing building's siting and design, and the steep and irregular topography of the site. These areas are positioned to the rear of the front building façade and first floor extension, and therefore are not discernible when viewed from Bower Street... The minor works above the height standard will not contribute to additional height when viewed from the public domain, including from the beach and walkway at the rear, in comparison to the existing dwelling. Therefore, the non-compliance with the height standard will not affect streetscape amenity, or existing characteristics of the precinct.

We consider the elements contributing to the proposal's additional height as being appropriate in this circumstance. The height non-compliance is a result of the existing built form to which alterations and additions are proposed, and will improve amenity for residents and maintain amenity for nearby development, through minimising overshadowing and loss of privacy, and ensuring no view impacts arise from the areas above the height standard.

As detailed, strict compliance with the development standard would not result in a better outcome for development. It would unnecessarily complicate orderly and economic development of the land in accordance with the intentions of the zoning and the objectives of the Environmental Planning and Assessment Act 1979. This is particularly the case when the proposed alterations and additions are otherwise compliant with building height, FSR, lot size and landscaping, with the exception of existing areas above the height standard to be refurbished or replaced. By requiring strict compliance, it would result in extensive elements of the existing building to be removed or significantly altered. It is noted that the proposal provides a thoughtful and contemporary response to the unique and sensitive site location.

Accordingly, in our opinion, the non-compliance will not be inconsistent with existing and desired future planning objectives for the locality, and the objectives of the height standard."

The above justification is agreed with and the written request to vary the development standard is well-founded. The variation is the result of the predominant retention and alteration of the existing dwelling house and historic excavation of the site. It is likely that the development would comply with the height of buildings development standard, if it were calculated from natural or extrapolated ground level.

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 Clause 1.3 Objects (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 Clause 4.6 (3)(b).

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

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

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

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

Comment:

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

Development Standard Objectives

The underlying objectives of the height of buildings development standard are addressed as follows:

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

Comment:

The proposed development includes sloping skillion and flat roof forms. These roof forms are of a more modern design than the existing dwelling, though are not uncommon in the locality, and are acceptable with respect to the topography, in that the dwelling and its roof forms follow the slope of the land. The roof form serves to reduce the overall height of the dwelling, compared to if a hipped or gabled pitched roof form was proposed. The overall height of the development is consistent and compatible with surrounding existing and approved developments.

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

Comment:

The proposed development demonstrates compliance with the maximum floor space ratio set by Clause 4.4 of the Manly LEP, which controls the bulk and scale of buildings. The proposed development, being alterations and additions to an existing dwelling generally using existing setbacks, remains of an overall bulk and scale anticipated for the site and locality. The portions of the development that breach this building height control are due to the existing excavation and steep slope of the site.

(c) to minimise disruption to the following—

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

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

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

Comment:

The proposed development is designed such that it does not result in unreasonable view loss to or from public or private spaces.

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

Comment:

The proposed development is compliant with the requirements of Clause 3.4.1 Sunlight Access and Overshadowing of the Manly DCP, and is therefore acceptable with respect to solar access.

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

Comment:

Not applicable. The subject site is zoned C3 Environmental Management.

Zone Objectives

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

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

Comment:

The proposed development is well designed with respect to the area's special ecological, scientific, cultural or aesthetic values, in that it is, in effect, a refurbishment of the existing dwelling house and revegetation of the lot, and not a complete redevelopment. In this way, the proposed development is of low impact.

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

Comment:

The proposed development retains the single residential use of the site, and does not have an adverse impact on the site or area's values.

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

Comment:

The proposed development does not require removal of any significant trees and is proposed to be suitably landscaped such that the built form does not dominate the foreshore, despite its non-compliance with the height of buildings development standard.

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

Comment:

The proposed development is designed and sited so as not to negatively impact upon the foreshore. The proposed works rely on minimal excavation, and therefore do not disturb significant geological features or bushland. The proposed development provides compliant landscaped open space and vegetation.

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

Comment:

The proposed development does not include works to the foreshore. The proposed development is supported by stormwater plans, and is compliant with the required total open space and landscaped area requirements, demonstrating stormwater runoff will be suitably managed.

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

Comment:

The proposed development is of consistent and compatible height and bulk to existing and approved developments in the surrounding area. The proposed height is complementary to the height of canopy trees, and is designed such that it provides a suitable balance between following the landform and

providing adequate amenity to the dwelling house.

It is considered on balance, that having regard to the particular circumstances, the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

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

Clause 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted. Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, and in accordance with correspondence from the Deputy Secretary on 2 November 2021, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the height of buildings development standard associated with a single dwelling house (Class 1 building).

6.2 Earthworks

The objectives of Clause 6.2 Earthworks require development:

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

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

(f) the likelihood of disturbing relics

Comment:

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

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

Comment:

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

6.4 Stormwater management

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

6.5 Terrestrial biodiversity

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

(a) protecting native fauna and flora, and

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

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

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

Comment:

The proposed development has been reviewed by Council's Bushland and Biodiversity team, who raise no objection to the proposal with reference to the above, subject to recommended conditions of consent. As such, the consent authority can be satisfied the proposed is not likely to have any adverse impact on the matters above and is designed to avoid, minimise and mitigate impacts.

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

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

Comment:

The proposed development has been reviewed by Council's Bushland and Biodiversity team, who raise no objection to the proposal, subject to conditions of consent. As such, the consent authority can be satisfied the proposed is designed, sited and will be managed to avoid significant adverse impact.

6.8 Landslide risk

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

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

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

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

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

Comment:

The application is supported by a geotechnical report, stormwater management plans, a waste management plan, and architectural plans, that demonstrate the proposed development is of acceptably low landslide risk. The proposed development has been reviewed by Council's Development Engineer, who raised no objection to the proposal, subject to recommended conditions of consent.

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

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

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

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

Comment:

Given the above, the proposed development is demonstrably designed, site and will be managed to avoid risk and adverse impact.

6.9 Foreshore scenic protection area

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

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

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

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

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

Comment:

The subject site does adjoins foreshore land and is proposed to be well-vegetated. The proposed development is compliant with respect to solar access requirements. The site's location, configuration and landscaped setting assist in obscuring the development from view from the foreshore. The proposed development:

- does not unreasonably impact upon the visual amenity of the foreshore and surrounds, and does not result in view loss from a public place to the foreshore,
- protects and improves scenic quality along the coastline,
- is suitable in its site context, and
- does not result in conflict between land-based and water-based coastal activities.

6.12 Essential services

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

(a) the supply of water,

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

Comment:

The subject site is supplied with the above essential services. The proposed development retains and relies upon these services.

Mainly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 825.3m²	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: Max. 1 dwelling per 500m ²	1 dwelling on 825.3m ² site	-	Yes
	Dwelling Size: Min. 105m ²	350m ²	-	Yes
4.1.2.1 Wall Height (based on gradient 1:3)	Max. 8m	E: 8.1m	1.25%	No
		W: 9m	12.5%	No
4.1.2.2 Number of Storeys	Max. 2 storeys	3 storeys	-	Existing
4.1.2.3 Roof Height	Height: Max. 2.5m	Max. 1.5m	-	Yes
	Pitch: Max. 35 degrees	<35 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	3.5m, consistent with the prevailing building line	-	Yes
4.1.4.2 Side Setbacks (based on wall height)	E: Min. 2.7m	Dwelling: Min. 2m	-	Existing
		New works: Compliant	-	Yes
	W: Min. 3m	Dwelling: Min. 1.1m	-	Existing
		New works: Compliant	-	Yes
	Windows: Min. 3m	E: Min. 2.1m	30%	No
		W: Min. 2.6m	13.3%	No
4.1.4.4 Rear Setbacks	Min. 8m	Min. 15.8m	-	Yes
4.1.4.6 Setback for development adjacent to LEP Zones RE1, RE2, E1 and E2	Min. 8m	Min. 15.8m	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Total Open Space: Min. 55% of the site (423.9m ²)	65.84% (543.4m ²)	-	Yes
	Above Ground: Max. 25% of TOS (135.85m ²)	16.48% (89.6m ²)	-	Yes

4.1.5.2 Landscaped Area	Min. 35% of TOS (190.19m ²)	47.15% (256.2m ²)	-	Yes
	Min. 3 native trees	>3 trees	-	Yes
4.1.5.3 Private Open Space	Min. 18m ²	>18m ²	-	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Max. 50% of frontage, up to 6.2m	7.8m, <50%	25.8%	No
4.1.9 Swimming Pools, Spas and Water Features	1m to coping	0.8m	20%	No
	1.5m to water	1m	33.3%	No
Schedule 3 Parking and Access	Min. 2 spaces	2 spaces	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 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)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

The existing development includes privacy screening to the eastern elevation of the lower ground floor and ground floor northern terraces to the point where the terrace is cut out at the north-eastern corner, as shown below circled in red:



The proposed development includes minor extension of the terraces to square off the north-eastern corner of both terraces. The existing cut-out portions can be seen above. A condition of consent has been included in the recommendation to require privacy screening to the full eastern elevation of the reconstructed terraces, so as to retain an equivalent level of privacy for the adjoining property to the east to the existing scenario, increased only to match the additional floor area. Screening to the west elevation is not considered necessary, as the proposed interface with the property to the west remains unchanged from the existing scenario.

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

The proposed development includes wall heights of 8.1 metres to the east and 9 metres to the west, where a maximum of 8 metres is allowed under this control. In the absence of its own objectives, Clause 4.1.2 relies on the objectives of Clause 4.3 Height of Buildings of the Manly LEP, which are addressed as follows with regard to the non-compliance.

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

Comment:

The proposed development includes sloping skillion and flat roof forms. These roof forms are of a more modern design than the existing dwelling, though are not uncommon in the locality, and are acceptable with respect to the topography, in that the dwelling and its roof forms follow the slope of the land. The roof form serves to reduce the overall height of the dwelling, compared to if a hipped or gabled pitched roof form was proposed.

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

Comment:

The proposed development demonstrates compliance with the maximum floor space ratio set by Clause 4.4 of the Manly LEP, which controls the bulk and scale of buildings. The proposed development, being alterations and additions to an existing dwelling, remains of an overall bulk and scale anticipated for the site and locality. The portions of the development that breach this wall height control are met with a flat roof and no parapet, so as to reduce resultant bulk. The proposed development generally retains existing setbacks, so as not to expand further to the adjoining properties to the east and west.

(c) to minimise disruption to the following—

- (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
- (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
- (iii) views between public spaces (including the harbour and foreshores),*

Comment:

The proposed development is designed such that it does not result in unreasonable view loss to or from public or private spaces.

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

Comment:

The proposed development is compliant with the requirements of Clause 3.4.1 Sunlight Access and Overshadowing of the Manly DCP, and is therefore acceptable with respect to solar access.

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

Comment:

Not applicable. The subject site is zoned C3 Environmental Management.

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

The proposed development includes a number of elements that do not strictly comply with the required setbacks, though these elements are either existing and unchanged, or reconstructed for the purpose of refurbishment. With respect to new non-compliant elements, this control provides that all new windows from habitable rooms of dwellings that face the side boundary are to be setback at least 3 metres from side boundaries. The proposed development includes reconfigured windows in the side walls 2.1 metres from the eastern side boundary, and 2.6 metres from the western side boundary. The windows are set at a non-compliant distance due to retention of the existing side walls. 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 proposed development will appear much the same from the street as the existing scenario, though with a wider garage and an updated landscape presentation. The proposed works do not disrupt the general pattern of the street, the street edge or the surrounding landscape character.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposed development is compliant with the requirements of Clauses 3.4.1 Sunlight Access and Overshadowing, 3.4.2 Privacy and Security, and 3.4.3 Maintenance of Views of the Manly DCP. The proposed development suitably retains existing setbacks and therefore respects the space between buildings and the rhythm and pattern of spaces. The proposed development is acceptable with regard to the proposed new driveway.

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

Comment:

The proposed development allows for flexibility on the site with the predominant retention of the existing dwelling without unreasonable impacts to the subject site or adjoining sites.

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

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

Comment:

Not applicable. The subject site is not classified as bush fire prone land.

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

The proposed development includes a reconstruction of the garage in the same location, though expanded to the west, to 7.8 metres in width, where this control allows for up to 6.2 metres. The expansion is for the purpose of providing secure storage. With regard to the consideration for a variation, the development is considered against the underlying objectives of the control as follows:

Objective 1) To provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).

Objective 2) To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.

Comment:

The proposed development retains two parking spaces on the site in an accessible location by the front boundary, as required by Schedule 3 Part A1 of the Manly DCP. This is sufficient in supporting the vehicular access needs of the occupants of the site. In this way, the proposed development does not result in reliance on street parking.

Objective 3) To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape.

Comment:

The proposed development retains the location of the driveway and garage, and provides an upgrade to the structures for safe, efficient and convenient access. The works are set behind a suitable front fence and are integrated with landscaping so as to minimise the visual impact of the structure on the view from the public domain.

Objective 4) To ensure that the layout of parking spaces limits the amount of site excavation in order to avoid site instability and the interruption to ground water flows.

Comment:

The proposed new garage does not rely on significant earthworks and is in fact set at a slightly higher ground level than the existing garage.

Objective 5) To ensure the width and number of footpath crossings is minimised.

Comment:

The proposed development does not alter the existing footpath crossings.

Objective 6) To integrate access, parking and landscaping; to limit the amount of impervious surfaces and to provide screening of internal accesses from public view as far as practicable through appropriate landscape treatment.

Comment:

The proposed new internal driveway and widened garage are set behind a suitable street front fence, which has the effect of screening the structure from public view.

Objective 7) To encourage the use of public transport by limiting onsite parking provision in Centres that are well serviced by public transport and by encouraging bicycle use to limit traffic congestion and promote clean air.

Comment:

Not applicable. The subject site is not located in a centre.

4.1.9 Swimming Pools, Spas and Water Features

The proposed development includes a spa in the rear yard, 800mm from the western side boundary. The proposed development is considered against the underlying objectives of the control as follows.

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

Comment:

The proposed spa is located in the rear yard of the site, aligned with the swimming pool of the property to the west. Further, the proposal includes a spa only, and no swimming pool, which would result in greater recreational impact. As such, the proposed spa is suitable with respect to visual and aural privacy for the subject site and adjoining sites.

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

Comment:

The proposed spa is in the rear yard and is not visible from the public domain.

Objective 3) To integrate landscaping; and

Comment:

The proposed spa is located amongst vegetation, as detailed in the supporting landscape plan, and the proposed development overall is compliant with the required landscaped area requirements.

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

Comment:

Not applicable. The subject site is not classified as bush fire prone 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 \$45,149 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$4,514,917.

CONCLUSION

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

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

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

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

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP

- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

Council is satisfied that:

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

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

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

PLANNING CONCLUSION

This proposal, for alterations and additions to a dwelling house and associated works has been referred to the Development Determination Panel (DDP) due to a variation to the height of buildings development standard of 16.07% (1.366 metres).

No submissions were received in relation to this application.

Critical assessment issues related to height of buildings, wall height, window setbacks, pool setbacks, and the width of the garage.

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

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

RECOMMENDATION

That Northern Beaches Council as the consent authority permits a contravention of Clause 4.3 Height of Buildings 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 DA2023/1448 for Alterations and additions to a dwelling house and associated works on land at Lot 25 DP 8075, 38 Bower Street, MANLY, subject to the conditions printed below:

Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section

4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

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
1002	A	Site Plan_Proposed	Alexander & Co	25 July 2023
2100	A	Basement - General Arrangement Plan - Proposed	Alexander & Co	25 July 2023
2101	A	Lower Ground Floor - General Arrangement Plan - Proposed	Alexander & Co	25 July 2023
2102	A	Ground Floor - General Arrangement Plan - Proposed	Alexander & Co	25 July 2023
2103	A	First Floor - General Arrangement Plan - Proposed	Alexander & Co	25 July 2023
3000	A	General Arrangement - Elevation E01_Proposed	Alexander & Co	25 July 2023
3001	A	General Arrangement - Elevation E02_Proposed	Alexander & Co	25 July 2023
3002	A	General Arrangement - Elevation E03_Proposed	Alexander & Co	25 July 2023
3003	A	General Arrangement - Elevation E04_Proposed	Alexander & Co	25 July 2023
3100	A	Site Elevations - Elevation E05_Proposed	Alexander & Co	25 July 2023
3101	A	Site Elevations - Elevation E06 & E08_Proposed	Alexander & Co	25 July 2023
3102	A	Site Elevations - Elevation E07_Proposed	Alexander & Co	25 July 2023
4100	A	General Arrangement - Section 01_Proposed	Alexander & Co	25 July 2023
4101	A	General Arrangement - Section 02_Proposed	Alexander & Co	25 July 2023
4102	A	General Arrangement - Section 03_Proposed	Alexander & Co	25 July 2023
4103	A	General Arrangement - Section 04 &	Alexander & Co	25 July 2023

		05_Proposed		
4200	A	Site Sections - Section S06_Proposed	Alexander & Co	25 July 2023
8000	A	Material Palette	Alexander & Co	25 July 2023
LP 01	0	Landscape Plan - Level 1	Edwina Stuart	31 July 2023
LP 02	0	Landscape Plan - Ground Floor	Edwina Stuart	31 July 2023
LP 03	0	Landscape Plan - Lower Ground	Edwina Stuart	31 July 2023
PS 01	0	Plant Schedule	Edwina Stuart	31 July 2023
23S255-H02	C	Stormwater Plans and Details	Heinz Consulting Engineers	21 July 2023
23S255-H03	C	Stormwater Plans and Details	Heinz Consulting Engineers	21 July 2023
23S255-H03	C	Erosion and Sediment Control Plan and Details	Heinz Consulting Engineers	21 July 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate A502363	-	Efficient Living	28 July 2023
Geotechnical Investigation	7265-R1	AssetGeoEnviro	26 July 2023
Arboricultural Impact Appraisal and Method Statement	-	Ezigrow	24 August 2023

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

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

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

2. 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 sewerred areas or managed on-site in unsewerred 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

4. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$45,149.17 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 \$4,514,917.00.

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.

5. **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

6. **On Slab Landscape Works**

a) details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided. Landscape treatment details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, and services connections. The following soil depths are required to support landscaping: 300mm for groundcovers, perennials, and grasses; 600mm for shrubs; and 800mm for small trees.

b) design certification shall be submitted to the Certifier by a qualified Structural Engineer, that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

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

installed.

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. **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 distance between gaps is not to exceed more than 6 metres.

Plans are to be certified as complying with this condition and provided to the Principal Certifier prior to issue of the Construction Certificate.

Reason: To preserve wildlife corridors.

9. **Amendment of Landscape Plans**

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

- Replacement of Pennisetum "Nafray" with a suitable alternative as per Manly DCP Clause 3.3.1.iv) (Landscaping in Bandicoot Habitat).

The Landscape Plan is to be amended by a qualified landscape architect and provided to the Principal Certifier prior to issue of the Construction Certificate.

Reason: To maintain and replace habitat on the site.

10. **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.

11. **Stormwater Disposal**

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent in accordance with AS/NZS 3500 and Council's Water Management for Development Policy, prepared by an appropriately qualified and practicing Civil 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 rear via the existing site stormwater system.

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

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

12. **Off Street Parking Design**

The Applicant shall submit a design for the parking facility in accordance with the relevant provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical Controls and Section 2.6 Design of Domestic Driveways.

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

Reason: Compliance with this consent.

13. **Amendments to the Approved Plans**

Privacy screening is to be included on the eastern elevation of the lower ground floor and ground floor northern terraces. The screening is to be constructed of louvres fixed in place at a 45-degree angle to prevent direct viewing to adjoining properties to the east, spaced such that the gaps between louvres are no more than 20 millimetres in width. The screening is to be to a minimum height of 1.65 metres above the finished floor level of the relevant terrace.

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. **Compliance with Standards**

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

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

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

16. **Sydney Water "Tap In"**

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

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

- "Tap in" details - see <http://www.sydneywater.com.au/tapin>

- Guidelines for Building Over/Adjacent to Sydney Water Assets.

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

17. Installation and Maintenance of Sediment and Erosion Control

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site

DURING BUILDING WORK

18. Tree and Vegetation Protection

- a) existing trees and vegetation shall be retained and protected, including:
 - i) all trees within the site not approved for removal, including trees and vegetation nominated for retention on the approved Plans,
 - ii) all trees and vegetation located on adjoining properties,
 - iii) all trees and vegetation within the road reserve.
- b) tree protection shall be undertaken as follows:
 - i) tree protection shall be in accordance with AS 4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
 - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
 - v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
 - vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
 - vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
 - viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS 4970-2009 Protection of trees on development sites,
 - ix) the activities listed in section 4.2 of AS 4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
 - x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree

canopy, and shall be in accordance with AS 4373-2007 Pruning of amenity trees,
xi) the tree protection measures specified in this clause must: be in place before work commences on the site, be maintained in good condition during the construction period, and remain in place for the duration of the construction works.

c) the Principal Certifier must ensure that:

i) If activated, the arboricultural works listed in a) and b) are undertaken and certified by an Arborist/Project Arborist as compliant to AS 4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.

19. **Condition of Trees**

a) during the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to, or by seeking arboricultural advice from an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture during the works. In this regard all protected trees shall not exhibit:

- i) a general decline in health and vigour,
- ii) damaged, crushed or dying roots due to poor pruning techniques,
- iii) more than 10% loss or dieback of roots, branches and foliage,
- iv) mechanical damage or bruising of bark and timber of roots, trunk and branches,
- v) yellowing of foliage or a thinning of the canopy untypical of its species,
- vi) an increase in the amount of deadwood not associated with normal growth,
- vii) an increase in kino or gum exudation,
- viii) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
- ix) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

b) any mitigating measures and recommendations required by the Arborist/Project Arborist are to be implemented.

c) the owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of trees.

20. **Pre-clearance Survey**

Before any vegetation/materials/debris stockpiles are removed, a pre-clearance survey for Long-nosed Bandicoot activity and presence is required. Clearing should ideally be carried out at dusk and completed within one day so that Long-nosed Bandicoots do not reoccupy partially cleared areas overnight. A record of each inspection is to be made in the daily inspection register log-book.

The logbook is to be made available to Principal Certifying Authority.

Written evidence of compliance (including records of inspections and any wildlife incidents) is to be provided to the Principal Certifier prior to any Occupation Certificate.

Reason: To protect native wildlife.

21. **Wildlife Protection**

If construction activity associated with this development results in injury or displacement of a native mammal, bird, reptile or amphibian, a licensed wildlife rescue and rehabilitation

organisation must be contacted for advice.

Reason: To protect native wildlife.

22. **Protection of Habitat Features**

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

Reason: To protect wildlife habitat.

23. **Road Reserve**

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

Reason: Public safety.

24. **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.

25. **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.

26. **Protection of Council's Public Assets**

Any damage to Council's public assets shall be made good by the applicant, and/or the contractor, to the satisfaction of Council.

Council's public assets include, but is not limited to, the following: road, kerb and gutters, crossovers, crossings, paths, grass verge, open space and associated elements such as furniture, recreational facilities and the like, within the meaning of the Local Government Act 1993.

Existing trees shall be protected in accordance with AS4970-2009 Protection of Trees on Development Sites, with particular reference to Section 4, with no ground intrusion into the tree protection zone and no trunk, branch nor canopy disturbance.

Reason: To protect and/or restore any damaged public asset.

27. **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.

28. **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 Technical Manual 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.

29. **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.

30. **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

31. **Installation and certification of solid/fuel burning heater**

The solid fuel heater must be certified to comply with Australian Standards 4012 and 4013.

Provide to the Principal Certifier certification that the solid fuel heater has been installed by an appropriately experienced and qualified person, in accordance with the relevant provisions of AS2918 – Domestic Solid Fuel Burning Appliances – Installation.

Reason: To ensure the installation is completed in a legislatively compliant manner.

32. **Landscape Completion**

a) landscape works are to be implemented in accordance with the approved Landscape Plan(s) (drawings LP01, LP02, LP03, PS01 by Edwina Stuart dated 31/07/23), and inclusive of the following conditions:

- i) landscape works are to be contained within the legal property boundaries,
- ii) planting shall be installed as indicated on the approved Landscape Plan(s) unless otherwise imposed by any conditions,
- iii) all tree planting shall be a minimum pre-ordered planting size of 75 litres or as otherwise scheduled if greater in size; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth generally, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and located either within garden bed or within a prepared bed within lawn,
- iv) mass planting shall be installed in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,

v) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces,

vi) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone.

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

Reason: Environmental amenity.

33. **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.

34. **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.

35. **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.

36. **Certificate of Compliance**

Provide Council a certificate from an appropriately qualified person indicating the solid fuel burning heater is compliant with all relevant legislation, Building Code of Australia, Australian Standards, Specifications and manufacturer requirements.

Reason: To ensure the system operates in a legislatively compliant manner.

37. **Bright Lighting**

No bright lighting or motion detectors are to be installed to illuminate the lawn or garden areas. A modest amount of low lighting may be used for safety purposes only.

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

Reason: Bright lighting disturbs Long-nosed Bandicoots and disrupts normal Bandicoot foraging, sheltering and nesting activity.

38. **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

39. **Landscape Maintenance**

a) if any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components.

b) trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

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

d) a maintenance activity schedule for on-going maintenance of planters on slab shall be incorporated to monitor and replenish soil levels as a result of soil shrinkage over time.

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. **Control of Domestic Dogs/Cats**

Domestic dogs and cats are to be kept from entering wildlife habitat areas at all times.

Dogs and cats are to be kept in an enclosed area and/or inside the dwelling, or on a leash such that they cannot enter areas of wildlife habitat, bushland or foreshore unrestrained, on the site or on surrounding properties or reserves.

Reason: To protect native wildlife and habitat.

42. **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.

43. **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.

44. **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. 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.

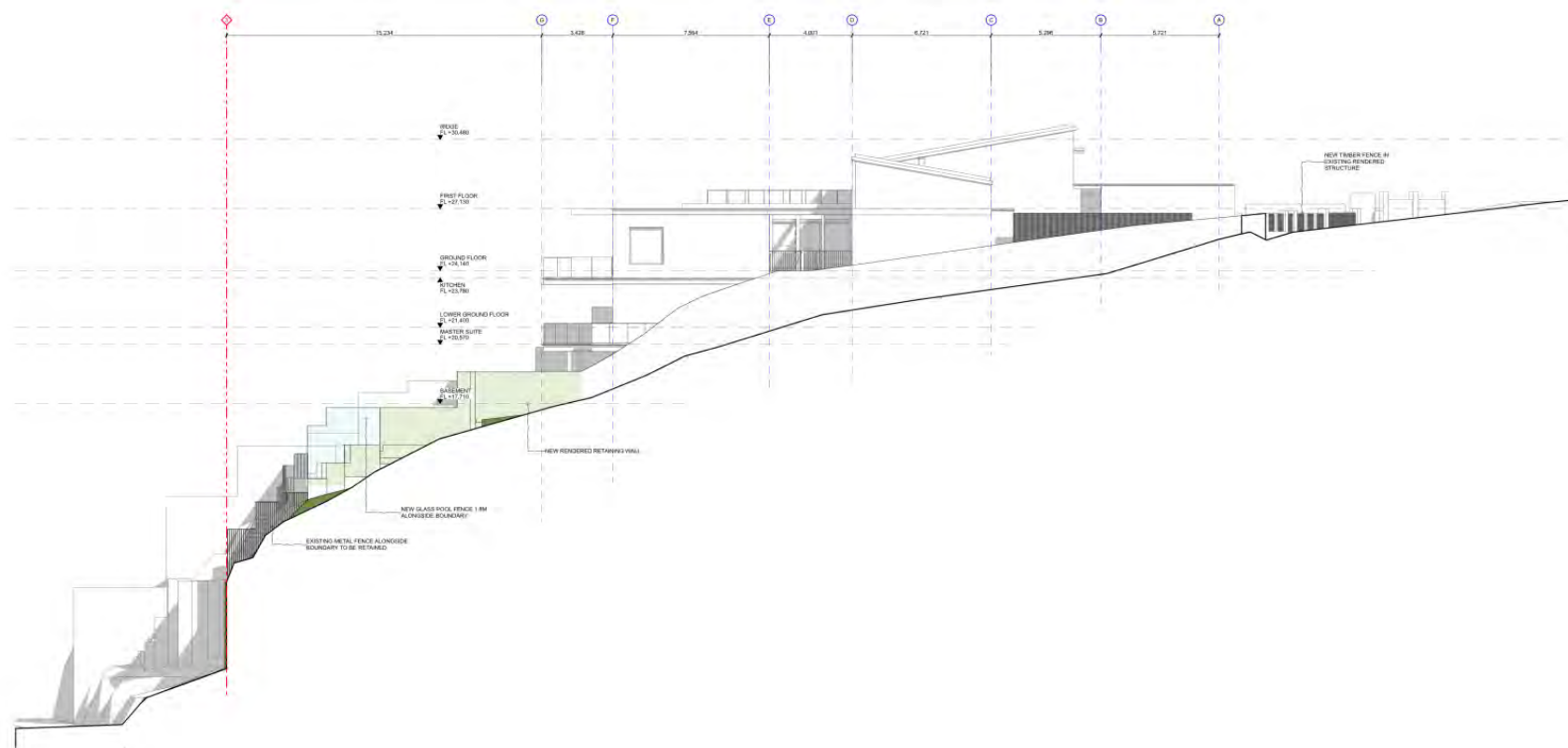
45. **Operation of solid fuel burning heaters**

The owner/operator must take all practicable measures to prevent the likelihood of causing smoke and/or odour nuisances. Such measures must include:

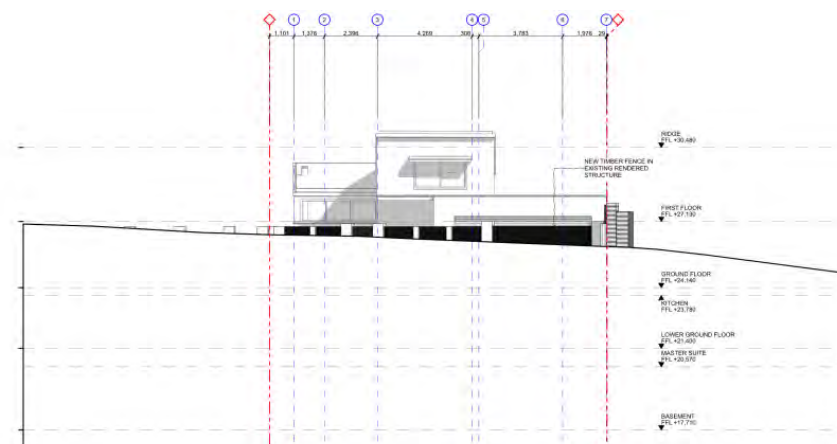
- Using dry seasoned hardwood
- Storing wood in a dry well-ventilated place
- Having a hot and well oxygenated fire
- Ensuring that the chimney flue is clean
- Checking the chimney at different stages of the fire to see if there is any smoke
- Maintenance according to the manufacturer's specifications

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





REV. DATE. DESCRIPTION 1. 01/10/2023. KIM DUNN/ARCHITECT	GENERAL NOTES 1. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED. 2. DO NOT SCALE OFF THIS DRAWING. USE ONLY DIMENSIONS PROVIDED. 3. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED. 4. ALL DIMENSIONS TO BE CHECKED ON SITE PRIOR TO THE COMMENCEMENT OF WORK. 5. THE CLIENT ACCEPTS THE RESPONSIBILITY OF ALL DIMENSIONS AND THE ARCHITECT'S LIABILITY FOR THE USE OF THIS DOCUMENT FOR THE PURPOSES OF THIS PROJECT.	LEGEND - DA TO BE LAMINATED 1. EXISTING CONCRETE TO BE REFINISHED 2. EXISTING CONCRETE TO BE REFINISHED 3. EXISTING CONCRETE TO BE REFINISHED 4. EXISTING CONCRETE TO BE REFINISHED 5. EXISTING CONCRETE TO BE REFINISHED	DA COMPLIANCE LEGEND 1. EXISTING CONCRETE TO BE REFINISHED 2. EXISTING CONCRETE TO BE REFINISHED 3. EXISTING CONCRETE TO BE REFINISHED 4. EXISTING CONCRETE TO BE REFINISHED 5. EXISTING CONCRETE TO BE REFINISHED	DA MATERIAL CUT HATCHING 1. EXISTING CONCRETE TO BE REFINISHED 2. EXISTING CONCRETE TO BE REFINISHED 3. EXISTING CONCRETE TO BE REFINISHED 4. EXISTING CONCRETE TO BE REFINISHED 5. EXISTING CONCRETE TO BE REFINISHED	DA MATERIAL SURFACE HATCHING 1. EXISTING CONCRETE TO BE REFINISHED 2. EXISTING CONCRETE TO BE REFINISHED 3. EXISTING CONCRETE TO BE REFINISHED 4. EXISTING CONCRETE TO BE REFINISHED 5. EXISTING CONCRETE TO BE REFINISHED	DA SHADOW STUDY 1. EXISTING CONCRETE TO BE REFINISHED 2. EXISTING CONCRETE TO BE REFINISHED 3. EXISTING CONCRETE TO BE REFINISHED 4. EXISTING CONCRETE TO BE REFINISHED 5. EXISTING CONCRETE TO BE REFINISHED	CLIENT: TRACY & JAMES SMAL PROJECT: BOWER HOUSE 15 BOWEN ST WALL 7 NOV 2023 DATE: 01/10/2023 SCALE: 1:100 (A1) CHECKED: 85 PROJECT NO.: 0567-3100-A
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gsa planning

MANLY LEP 2013

Clause 4.6 Exceptions to Development Standards – Height of Buildings

Alterations and Additions to the Existing Dwelling House,
New Garage, Spa and Associated Landscape Works at

**No. 38 Bower Street,
Manly**

Prepared for:

James and Tracey Smail
C/- Alexander & Co.
63 Brisbane Street
Bondi Junction NSW 2022

Prepared by:

GSA PLANNING
Urban Design, Environmental & Traffic Planners
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JOB NO. 23217
September 2023

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**MANLY LOCAL ENVIRONMENTAL PLAN (LEP) 2013
CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS**

APPLICANT'S NAME: James and Tracy Smail

SITE ADDRESS: No. 38 Bower Street, Manly

PROPOSAL: Alterations and additions to the existing dwelling house, new garage, spa and associated landscape works

1. (i) Name of the applicable planning instrument which specifies the development standard:

Manly Local Environmental Plan (LEP) 2013

(ii) The land is zoned:

C3 Environmental Management. The objectives of the C3 Zone are as stated:

- To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.
- To provide for a limited range of development that does not have an adverse effect on those values.
- To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.
- To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.
- To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.
- To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.

(iii) The number of the relevant clause therein:

Clause 4.3 – Height of Buildings which is stated as follows:

- (1) The objectives of this clause are as follows—
 - (a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,
 - (b) to control the bulk and scale of buildings,
 - (c) to minimise disruption to the following—
 - (i) views to nearby residential development from public spaces (including the harbour and foreshores),
 - (ii) views from nearby residential development to public spaces (including the harbour and foreshores),
 - (iii) views between public spaces (including the harbour and foreshores),
 - (d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,
 - (e) to ensure the height and bulk of any proposed building or structure in a recreation or conservation zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.
- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

This Clause 4.6 Exception to Development Standards should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by GSA Planning.

2. Overview

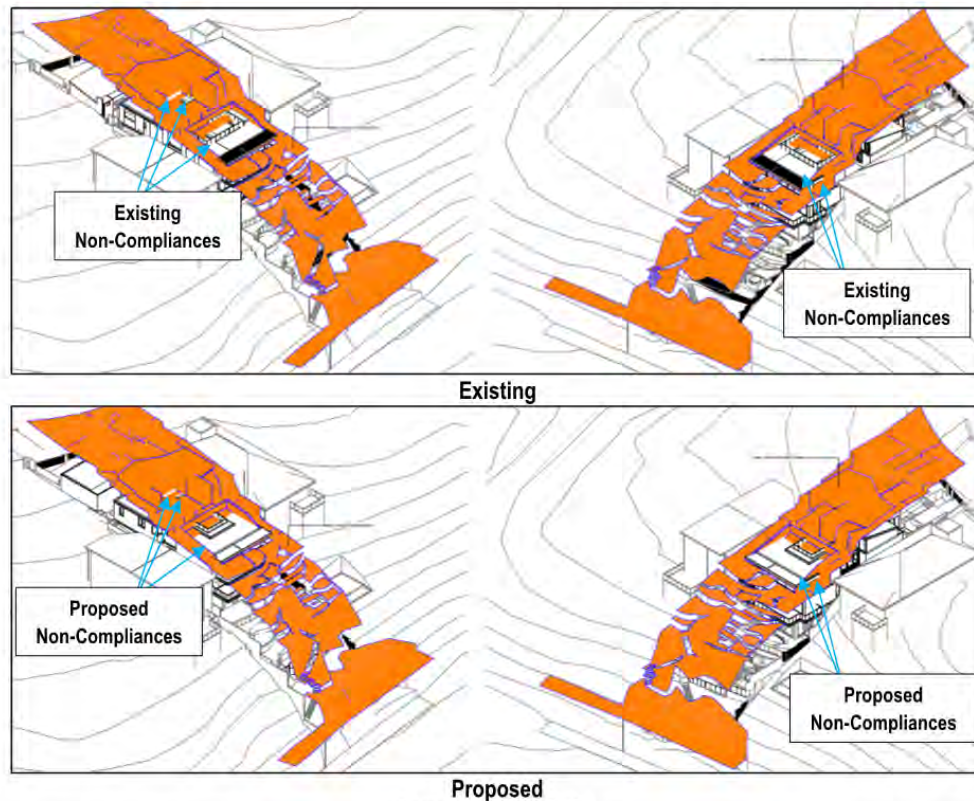
This Clause 4.6 Exception to Development Standards has been prepared in accordance with the most recent case law. In our opinion, the variation achieves the objectives of the zone and development standard and has demonstrated there are sufficient environmental planning grounds to justify contravening the development standard.

3. Specify the nature of Development Standard sought to be varied and details of variation:

The development standard to which this request for variation relates is Clause 4.3 of the LEP – Height of Buildings. This Clause operates in conjunction with the Height Map which indicates a maximum 8.5 metres applies to the subject site. Clause 4.3 is consistent with the definition for a development standard under Section 1.4 of the Environmental Planning and Assessment Act 1979 (EPA Act).

The proposal generally complies with the building height standard, with the exception of small portions of the roof, roof terrace and upper levels at the middle and rear of the dwelling. The non-compliance with height relates to replacing roofing above the first floor level, refurbishment of the first floor terrace, a negligible portion of one replacement window on the western side elevation, and a solid awning to replace the existing awning structure above the rear ground floor terrace. These works result in a maximum height of 9.866m at the area of greatest non-compliance (16.07% above the development standard), which remains the same as existing.

As the areas above the height standard relate to improvement works to the existing building and do not increase the existing height or envelope, the non-compliance is technical in nature. The areas of non-compliance when comparing the existing dwelling and proposed dwelling are practically identical (see **Figure 1** on the following page), and their location away from the front building line ensures they are not readily visible in the streetscape.



Source: Alexander & Co.

Figure 1: 3D LEP Height Blanket Demonstrating Existing and Proposed Height

The proposed alterations and additions provide a compatible building height alignment with the existing dwelling and nearby developments. The non-compliances are considered technical, resulting from the existing built form, steep cross-fall and sloping topography from the front to rear boundary of the subject site.

4. Consistency with Objectives of Clause 4.6

The objectives of Clause 4.6 seek to provide appropriate flexibility to the application of development standards in order to achieve better planning outcomes both for the development and from the development. In the Court determination in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] 236 LGERA 256 (*Initial Action*), Preston CJ notes at [87] and [90]:

Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development...In any event, Clause 4.6 does not give substantive effect to the objectives of the clause in Clause 4.6(a) or (b). There is no provision that requires compliance with the objectives of the clause.

However, it is still useful to provide a preliminary assessment against the objectives of the Clause. The objectives of Clause 4.6 and our planning response are as follows:

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

Flexibility is sought in the application of the height development standard to the proposed development in the circumstance of this particular case. The height departure relates to portions of the building at the middle and rear sections of the dwelling, which are positioned above the maximum height as existing. The technical non-compliances are attributed to the envelope of the existing dwelling, and are ultimately a result of the challenging topography of the site, which has a significant fall in the existing ground line from the front of the site to the rear. Changes to the envelope at the front portion of the dwelling do not result in a building height non-compliance. The proposal complies with the other major built form controls including FSR and minimum lot size, and generally complies with DCP wall height control (again with the exception of existing areas of non-compliance). On this basis, the non-compliance is considered to be consistent with the objectives of Clause 4.6.

Flexibility in this circumstance will provide a better outcome for and from development. This includes refurbished private open space at the first floor terrace, new roofing, and the retention of the existing floor to ceiling heights, which will have no direct effect on the amenity of adjoining residents or the public domain. To refuse this application would unnecessarily complicate the design of the built form and reduce the existing heights of the dwelling.

5. Justification of Variation to Development Standard

Clause 4.6(3) outlines that a written request must be made seeking to vary a development standard and that specific matters are to be considered. The Clause states, inter alia:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

This written request justifies the contravention of the development standard by demonstrating that compliance is unreasonable or unnecessary in the circumstances; and there are sufficient environmental planning grounds to justify the non-compliance. These matters are discussed in the following sections.

5.1 Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case

Clause 4.6(3)(a) requires the applicant to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. In *Wehbe v Pittwater Council* (2007) 156 LGERA 446 (*Wehbe*), Preston CJ established five potential tests for determining whether a development standard could be considered unreasonable or unnecessary. This is further detailed in *Initial Action* where Preston CJ states at [22]:

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

It is our opinion that the proposal satisfies Test 1 established in *Wehbe* and for that reason, the development standard is unreasonable and unnecessary in this instance. The relevant test will be considered below.

Test 1 - The objectives of the standard are achieved notwithstanding non-compliance with the standard;

Despite the proposed development's non-compliance with the applicable height development standard, the proposal achieves the desired low density character of the area. The proposal provides a height, bulk and scale that is generally consistent with that envisaged by Council's controls. Reasons why the proposed development achieves the objectives of the height standard are explained below.

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

The proposed building height resulting from the alterations and additions is generally compliant with the LEP development standard, with the exception of minor portions of the dwelling's roof which do not increase in height compared to existing; and small areas of the first floor terrace area, side façade works, and replacement awning. The proposal continues the design of the existing roof, to allow for a slanting roof form up to the street, and retains the stepped design of the proposal at the middle and rear of the site due to the existing topography. Further, the areas of height non-compliance are in locations that are not readily visible in the streetscape, and not discernible compared to existing when viewed from the rear.

b) to control the bulk and scale of buildings,

The areas above the height standard do not result in increases to the existing dwelling's envelope and are a result of the existing built form and steep topography of the site. The proposal will continue to provide a two storey appearance in the streetscape, consistent with the existing dwelling and surrounding development. Therefore, the non-compliance will not result in an increase to the bulk and scale of the built form on site.

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),**

The areas above the height standard do not increase the height or building envelope compared to the existing dwelling. Therefore the proposal will minimise disruption to views to and from nearby residential development to public spaces, and 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,

The areas above the height standard do not increase the building envelope of the existing dwelling. Therefore, any overshadowing resulting from the proposal is not a result of the height non-compliance. In any case, we note that the proposed alterations and additions will only have a minor impact to the neighbouring dwelling at No. 40 Bower Street at 9:00am, with negligible additional shadow to an area of the front setback near the boundary, and a small portion of the swimming pool and adjoining garden areas. The only impact to No. 36 Bower Street is at 3:00pm to the front hardstand parking area. The public domain will generally retain existing levels of solar access, with the exception of small portions of the footpath being overshadowed at 9:00am.

In any case, we reiterate that these minor areas of reduction to solar access do not result from the areas of height non-compliance.

- 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 existing vegetation and topography of the site and its surrounds has been taken into consideration in the proposal, which retains trees on site and provides generous soft landscaped areas, whilst minimising cut and fill to retain the site topography. The proposed areas above the height standard are minor and technical in nature, and will not impact the existing vegetation and topography of the site and surrounding land uses, including nearby vegetation and bushland.

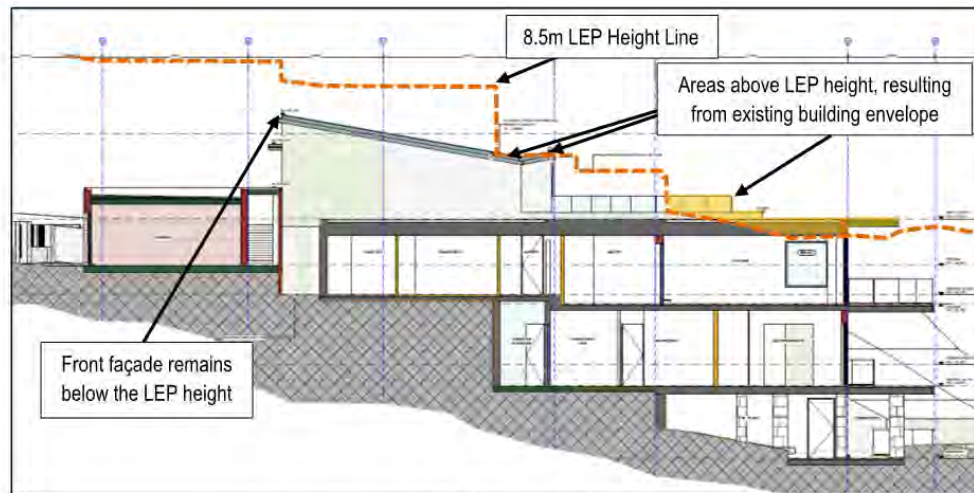
Accordingly, although the proposed alterations and additions will exceed the height standard, this is unlikely to have any significant adverse impacts as the design is largely contained within a compliant building envelope, and non-compliances relating to building height result from the existing built form.

5.2 There are Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard

The proposal is consistent with the relevant zone objectives and satisfies one of the 'unreasonable and unnecessary' tests established by the Court in *Wehbe*. In *Initial Action*, Preston CJ states at [23] – [24] that the environmental planning grounds must be 'sufficient' in two respects, *inter alia*:

- a) *The environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.*
- b) *The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole.*

This report demonstrates the proposed alterations and additions will facilitate a built form that is compatible in height and scale with nearby existing and future development. The areas of height contravention relate to refurbishment works to the existing first floor terrace, replacement of the existing upper roof, a minor window change, and replacement of the awning, which in itself does not alter the envelope of the existing built form on the site. The non-compliances for these works relate to existing areas above the height standard, being a result of the existing building's siting and design, and the steep and irregular topography of the site. These areas are positioned to the rear of the front building façade and first floor extension, and therefore are not discernible when viewed from Bower Street (see **Figure 2** on the following page). The minor works above the height standard will not contribute to additional height when viewed from the public domain, including from the beach and walkway at the rear, in comparison to the existing dwelling. Therefore, the non-compliance with the height standard will not affect streetscape amenity, or existing characteristics of the precinct.



Source: Alexander & Co

Figure 2: Proposed Height Shown in Section

We consider the elements contributing to the proposal's additional height as being appropriate in this circumstance. The height non-compliance is a result of the existing built form to which alterations and additions are proposed, and will improve amenity for residents and maintain amenity for nearby development, through minimising overshadowing and loss of privacy, and ensuring no view impacts arise from the areas above the height standard.

As detailed, strict compliance with the development standard would not result in a better outcome for development. It would unnecessarily complicate orderly and economic development of the land in accordance with the intentions of the zoning and the objectives of the Environmental Planning and Assessment Act 1979. This is particularly the case when the proposed alterations and additions are otherwise compliant with building height, FSR, lot size and landscaping, with the exception of existing areas above the height standard to be refurbished or replaced. By requiring strict compliance, it would result in extensive elements of the existing building to be removed or significantly altered. It is noted that the proposal provides a thoughtful and contemporary response to the unique and sensitive site location.

Accordingly, in our opinion, the non-compliance will not be inconsistent with existing and desired future planning objectives for the locality, and the objectives of the height standard.

For the reasons contained in this application, there are sufficient environmental planning grounds to justify the minor variation to the development standard in the circumstances of this case, as required in Clause 4.6(3)(b).

6. Clause 4.6(4)(a) Requirements

Clause 4.6(4)(a) guides the consent authority's consideration of this Clause 4.6 variation request. It provides that:

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

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

The applicant submits that the consent authority can be satisfied of each of the requirements of Clause 4.6(4)(a), for all the reasons set out in this written request and having regard to the site and locality.

In our opinion, the proposal achieves the objectives of the Height of Buildings Development Standard, as already demonstrated; and the C3 Zone, as discussed below:

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

Response: The proposal retains the low-impact residential character of the area, through the provisions of modest alterations and additions to the existing single residential dwelling. Given the continuing residential use and sensitive design, with areas of height non-compliance resulting from the existing built form, the proposal will maintain the ecological, scientific or cultural values of the locality, and enhance the aesthetic value of the site.

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

Response: The proposed alterations and additions have carefully considered the unique values of the C3 Environmental Management Zone. The works retain the typical form of development in the locality, respecting the area's built and natural values. The areas above the height standard are a result of the existing building and will not have any impact on ecological, scientific, cultural or aesthetic values of the zone.

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

Response: The site has a strong landscaped character which includes terraced gardens, lawn areas, various plantings, groundcover vegetation and trees. The proposed height breach does not have any bearing on the landscaped area and trees on the site, noting the built form will continue to blend with the natural scenic qualities of the foreshore.

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

Response: The proposed alterations and additions have considered the unique and sensitive natural environment of the site and surrounding area. The proposal will retain the landscaped setting to the rear with portions of semi-open fencing, which will preserve nearby geological and bushland features including wildlife corridors. The proposed height will not have any impact on these features.

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

Response: As indicated, the proposal preserves native vegetation at the rear of the site which assists in filtering pollutants, along with the stabilisation of soil. Importantly, stormwater runoff will be managed in accordance with the Stormwater Management Plan, which is designed to maintain the ecological characteristics of the locality. The proposed height will not impact upon stormwater and runoff.

- Objective:** To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.
- Response:** The proposal will facilitate contemporary alterations and additions to the dwelling house on the site, which maintains a low-density use. The proposal generally maintains the existing building's heights, and is therefore compatible with surrounding development along Bower Street. The proposal will maintain a stepped built form which responds to the challenging topography, preserves the landscaped character and will not adversely affect the amenity of surrounding development.

From this, we consider the proposal is in the public interest and should be supported.

7. Clauses 4.6(4)(b) and 4.6(5) Requirements

Clause 4.6(4)(b) of the LEP requires the concurrence of the Secretary (of the Department of Planning and Environment) before the consent authority can exercise the power to grant development consent for development that contravenes a development standard.

Under Clause 55 of the Environmental Planning and Assessment Regulation 2021, the Secretary has given written notice dated 5 May 2020, attached to the Planning Circular PS 20-002 issued on 5 May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under Clause 4.6, subject to the conditions in the table in the notice. While the proposal exceeds the development standard by over 10%, the Planning Circular provides for the Local Planning Panel to assume concurrence.

Nevertheless, the matters in Clause 4.6(5) should still be considered when exercising the power to grant development consent for development that contravenes a development standard (*Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at [100] and *Wehbe* at [41]). In deciding whether to grant concurrence, the Secretary is required to consider the following:

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

The proposal is not considered to raise any matter of significance for State or regional environmental planning. The height non-compliance will enhance the amenity and functionality of the existing dwelling, through sympathetic alterations and additions, without significantly, unreasonably or unacceptably impacting neighbouring properties.

The public benefit of maintaining the development standard is not considered significant given that, regardless of the non-compliance, the proposal will appear consistent in the streetscape and public domain when compared to the existing development.

Accordingly, the proposal is consistent with the matters required to be taken into consideration before concurrence can be granted. The non-compliance contributes to a quality development which is consistent with the desired character of the precinct and is, in our opinion, in the public interest.

8. Conclusion

This written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard. This is summarised in the compliance matrix prepared in light of *Initial Action* (see **Table 1** on the following page).

We are of the opinion that the consent authority should be satisfied that the proposed development will be in the public interest because it achieves the objectives of the standard and the development objectives of the C3 Zone pursuant to the LEP. On that basis, the request to vary Clause 4.3 should be upheld.

Table 1: Compliance Matrix

Para (Initial Action)	Requirement	Section of this Report	Summary	Satisfied
10	Is it a development standard (s.1.4)	1	Yes	
11	What is the development standard	1	Clause 4.3: Height of Buildings	
12	What is the control	1 & 2	8.5m	
14	First Precondition to Enlivening the Power – Consent authority must form 2 positive opinions:		Both positive opinions can be formed as detailed below.	YES
15, 25	1st Positive Opinion – That the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by Clause 4.6(3). There are two aspects of that requirement.	5	The Clause 4.6 variation has adequately addressed both matters in Clause 4.6(3) by providing a detailed justification in light of the relevant tests and planning considerations.	YES
16-22	First Aspect is Clause 4.6(3)(a) – That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. Common ways are as set out in <i>Wehbe</i> .	5.1	The proposal satisfies Test 1 of <i>Wehbe</i> : The objectives of the standard are achieved notwithstanding the non-compliance with the standard.	YES
23-24	Second Aspect is Clause 4.6(3)(b) – The written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under Clause 4.6(4)(a)(i) that the written request has adequately addressed this matter. The environmental planning grounds must be "sufficient" in two respects: c) The environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. d) The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole.	5.2	Sufficient environmental planning grounds include, inter alia: - The proposal will facilitate a built form that is compatible in height and scale with nearby and future development; - The areas of non-compliance will not be readily discernible when viewed in the streetscape; and - The height non-compliance is a result of the existing built form to which alterations and additions are proposed.	YES
26-27	2nd Positive Opinion – That the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out.	6	The proposed development achieves the objectives of the height standard as addressed under Test 1 of <i>Wehbe</i> . The proposal also achieves the objectives of the C3 Zone.	YES
28-29	Second Precondition to Enlivening the Power –	7	As the relevant matters for consideration under Clause 4.6 have	YES

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	That the concurrence of the Secretary has been obtained [Clause 4.6(4)(b)]. On appeal, the Court has the power to grant development consent, subject to being satisfied of the relevant matters under Clause 4.6.		been satisfied as outlined above, the Council can grant development consent.	
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ITEM 3.2	DA2023/0898 - 22 BLIGH CRESCENT SEAFORTH - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE INCLUDING SWIMMING POOL
REPORTING MANAGER	Rodney Piggott
TRIM FILE REF	2023/795046
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations 3 ↓ Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

- A. That Council as the consent authority, vary the Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2023/0898 for Demolition works and construction of a dwelling house including swimming pool on land at Lot 12 DP 872763, 22 Bligh Crescent SEAFORTH, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0898
Responsible Officer:	Kye Miles
Land to be developed (Address):	Lot 12 DP 872763, 22 Bligh Crescent SEAFORTH NSW 2092
Proposed Development:	Demolition works and construction of a dwelling house including swimming pool
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Nicholas Victor Cal Valentina Stojanovska Cal
Applicant:	Emil Kucevic
Application Lodged:	10/07/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	18/07/2023 to 01/08/2023
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	4.4 Floor space ratio: 49.9%
Recommendation:	Approval
Estimated Cost of Works:	\$ 2,000,588.83

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 a departure from the floor space ratio development standard by more than 10%. A 49.9% variation to the FSR standard is proposed.

The 4.6 request for the non-compliance with FSR standard arises due to undersized nature of the site.

It is noted that proposal achieves compliance with the FSR variations permitted within Manly DCP for undersized allotments.

Notification of the application resulted in three (3) objections to the development, relating to;

- *View loss*
- *Building height*
- *Floor space ratio*
- *Streetscape*
- *Built form non-compliances*
- *Privacy*
- *Overshadowing*
- *Traffic*
- *Geotechnical*
- *Stormwater*
- *Recommended conditions*

There were a number of amendments made to the proposal during the assessment of this application, to address the issues raised during the assessment of the application.

This report concludes with a recommendation that the DDP support the Clause 4.6 variation and grant **APPROVAL** to the application, subject to attached conditions.

PROPOSED DEVELOPMENT IN DETAIL

Development application for demolition works and construction of a three storey dwelling house with basement carparking and a swimming pool. Specifically, the works comprise:

Basement (FFL18.61)

- Double garage with turning area.
- Plant and service rooms.
- Bin storage.

Lower ground floor (FFL21.81)

- Three bedrooms.
- Two bathrooms.
- Rumpus/gym room.
- Terrace.

Ground floor (FFL25.01)

- Open plan kitchen, living and dining area.
- One bathroom.
- Laundry and pantry.
- Balcony.
- Above-ground swimming pool.
- Pool house.
- Entry hall.

First floor (FFL 28.21)

- Master bedroom with ensuite and WIR.
- Terrace.

AMENDED PLANS

Following a preliminary assessment of the application, Council issues an RFI to the applicant on 17 October 2023, outlining concerns with the application.

The concerns related to building height, floor space ratio (FSR), streetscape and open space. In addition, Council's Traffic and Road Asset departments requested additional information.

The applicant lodged amended plans to address the concerns on 16 November 2023.

The amended plans incorporated the following changes:

- Existing floor were provided to clarify maximum building height.
- Widen garage and crossing to 6.0 metres
- Removal of basement workshop.
- Minimise internal voids.
- Removal of the chimney/entry element.
- Provision of 2.0 metre landscaped strip adjacent to the pool.
- Additional detail of road assets.

Community Participation Plan

The proposed amendments will have a reduced environmental impact on the adjoining properties when compared to the original proposal. Therefore, formal re-notification was not required in accordance with Northern Beaches Community Participation Plan.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Local Environmental Plan 2013 - 6.2 Earthworks
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

SITE DESCRIPTION

Property Description:	Lot 12 DP 872763 , 22 Bligh Crescent SEAFORTH NSW 2092
Detailed Site Description:	The subject site consists of one (1) allotment located on the southern and western sides of Bligh Crescent. The site is irregular in shape with the western and southern boundaries fronting Bligh Crescent for a combined length of 45 metres. The site has a surveyed area of 499.9m². The site is located within the R2 Low Density Residential zone and accommodates a two-storey dwelling house. The site slope's to the southern boundary with an approximate fall of 6 metres. The site contains a large canopy tree adjacent to the site's north eastern boundary. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by low density residential developments varying of size, age and construction.

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:

PLM2023/0010

Pre-lodgement meeting for demolition and construction of a dwelling house including a swimming pool. In summary, the issues raised by Council included:

- *Non-compliance with the front setback control for the garage fronting Bligh Crescent.*
- *Potential non-compliance with the wall height and storey control for the three storey portion of the development to the eastern side boundary and for the dwelling fronting Bligh Crescent.*
- *Non-compliance with the Height of Buildings development standard.*
- *The level of FSR breaches.*
- *Significant level of excavation to accommodate the basement level.*
- *Size of the basement level incorporating the plant room and storage room(s). Council will not support excessive and unnecessary excavation.*

The applicant was encouraged to redesign the proposal to reduce the overall bulk and scale of the dwelling and provide a more compliant development that responds to the site constraints.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended plans. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in	See discussion on "Notification & Submissions Received" in this report.

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application that included a certificate (prepared by Building Code and Bushfire Hazard Solutions, dated 15 May 2023) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 18/07/2023 to 01/08/2023 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 3 submission/s from:

Name:	Address:
Mr John Nixon Rabbitts Mrs Elizabeth Gai Rabbitts	28 Ethie Road BEACON HILL NSW 2100
Watermark Planning Mr Stuart Everett Gray Mrs Elizabeth Beow Yong Gray	PO Box 445 FORESTVILLE NSW 2087
Bill Tulloch	Po Box 440 MONA VALE NSW 1660

The following issues were raised in the submissions:

- **View loss,**
- **Building height,**
- **Floor space ratio,**
- **Streetscape,**
- **Built form non-compliances,**
- **Privacy,**

- **Overshadowing,**
- **Traffic,**
- **Geotechnical,**
- **Stormwater,**
- **Recommended conditions.**

The above issues are addressed as follows:

- **View loss**

The submissions raised concerns that the proposal will result in unacceptable view loss. In addition, concern is also raised that the landscaping along the northern boundary will potentially have an impact upon views.

Comment:

This issue has been addressed in detail under Clause '3.4.3 Maintenance of Views' in this report. In summary, a view loss assessment, in accordance with the four-part test detailed within *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140, has been undertaken within this assessment report. The views from the affected properties have been described and the impacts assessed. The detailed assessment finds that the extent of view loss arising from the proposed development is considered to range from negligible to minor, which is considered acceptable within the context of the view sharing principles, given the vulnerability of the impacted views and the proposal's compliance with the relevant controls that have a significant bearing on the maintenance of views. Furthermore, imposed conditions will limit the maturity height of proposed screen planting along the northern boundary such that it does result in any adverse view impacts.

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

- **Building height**

The submissions raised concerns that proposed addition will create a four-storey development that is out of character with the locality. In addition, concern is raised that the proposed building is sited above the 8.5 metre height limit.

Comment:

The proposal complies with the Height of Buildings development standard prescribed by the LEP. In addition, the amended plans include the existing dwelling floor plan, facilitating an accurate assessment of the proposal's compliance with the Height of Buildings development standard.

Notwithstanding this, it is noted that the dwelling is non-compliant with the Manly DCP number of storeys control, as it partially results in a three-storey development (excluding the basement, as per the control). Nevertheless, an evaluation of the merits of this non-compliance against the objectives of the relevant control has been conducted.

In summary, the non-compliance is largely a consequence from the slope of the land. However, it is considered that the building has been appropriately stepped with the site's topography, presenting itself as a predominantly two-storey dwelling, when viewed from the street. Overall,

the proposed development attains an acceptable level of compliance with the critical controls regulating building height within the locality.

This matter does not warrant the refusal of this application.

- **Floor Space Ratio (FSR)**

The submissions raised concerns that the FSR variation proposed under this application is unreasonable and therefore, supported by an inadequate Clause 4.6 assessment

Comment:

An assessment of the submitted clause 4.6 variation request has been undertaken within the relevant section of this report. The assessment finds the applicant's written request adequately demonstrates that it is unreasonable to apply strict compliance with the development standard and that there are sufficient environmental planning grounds to justify contravening the development standard, principally as the FSR is consistent with the requirements of the DCP for undersized allotments. It is considered that the proposal is consistent with the aims and objectives of the R2 Low Density Residential zone and the Floor space ratio development standard under Manly LEP 2013.

This matter does not warrant the refusal of the application.

- **Streetscape**

The submissions raised concerns that the proposal is an over-development of the site which will dominate the streetscape and impact upon the scenic qualities of the locality.

Comment:

Notwithstanding detailed discussions on the scale of the development (which is found to be commensurate to the lot size and surrounding developments) elsewhere in this report, it is considered that the proposed works are adequately articulated to mitigate bulk and scale impacts and sit within a landscaped setting which is integrated and designed to respect the natural site features. In addition, the amended proposal involves increasing the western setback and providing suitable planting within this area, which, will assist in reducing the impact of the built form and softening the appearance of the works when viewed from the public domain. Overall, the proposal is of an acceptable design when considering the site constraints and the existing built form.

This matter does not warrant the refusal of the application.

- **Built-form non-compliances**

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

Comment:

It is acknowledged that the proposal includes built form non-compliances relating to the Number of Storeys, Setbacks and Swimming Pools controls of the DCP. As such, the merits of these non-compliances have been assessed against the objectives of the relevant controls. In summary, the works are found to be consistent with the objectives of these controls, as the

proposal has responded appropriately to the site constraints, while remaining compatible with the existing built form and not giving rise to any adverse amenity impacts.

This matter does not warrant the refusal of this application.

- **Privacy**

The submissions raised concerns that the proposal will result in adverse privacy impacts for the surrounding residents.

Comment:

The proposed development is largely orientated to the street, as the southern and western boundaries adjoin Bligh Crescent. These elevations are not considered to result in any adverse privacy impacts as substantial building separation is afforded with the dwellings across the street. In addition, the northern and eastern elevations have been appropriately designed to minimise window openings and provide suitable screening where required to mitigate any direct overlooking. Overall, the proposal will maintain acceptable privacy between buildings and no further assessment is required in this instance.

This matter does not warrant the refusal of the application.

- **Overshadowing**

The submissions raised concerns that the proposal will give rise to unacceptable overshadowing impacts.

Comment:

An assessment of the application against Clause 3.4.2 Sunlight Access and Overshadowing of the Manly DCP reveals that the application is acceptable with the requisite provisions for solar access and does not unreasonably overshadow adjoining properties. In addition, clear attempts to minimise overshadowing impacts to the concerned properties are evident within the proposal's design, as the works sits well below the maximum allowable height and provide acceptable setbacks.

This matter does not warrant the refusal of this application.

- **Traffic**

The submissions raised concerns that the proposal, both during construction and in perpetuity, will result in an unacceptable traffic impact.

Comment:

The proposal as amended has been reviewed by Council's Development and Traffic Engineers, who raised no objections, subject to the recommended conditions of consent.

This matter does not warrant the refusal of this application.

- **Geotechnical**

The submissions raised concerns that the application does not contain sufficient information to

assess potential geotechnical impacts.

Comment:

The application is supported by a Geotechnical Report, and conditions are imposed to require that the recommendations within this report are satisfied.

The Geotechnical investigation provides a risk profile to determine the site is suitable for the proposed development and the concept design (as per the DCP and LEP). The report submitted sufficiently identifies that the proposal does not pose an unacceptable risk, and meets the requirements of the LEP (as later discussed in this report). Conditions are imposed to require further investigation and consideration prior to CC, and the structural design is required at that stage.

The Geotechnical report also provides suitable recommendations for excavation works and control of vibration.

Conditions also require Dilapidation Reports to be provided prior to and post development.

This matter does not warrant the refusal of this application.

- **Stormwater**

The submissions raised concern with the proposed stormwater management measures.

Comment:

Council's Development Engineers have reviewed the proposed stormwater plan and have raised no objections to the design.

This matter does not warrant the refusal of the application.

- **Recommended conditions**

The submission has provided a list of recommended conditions.

Comment:

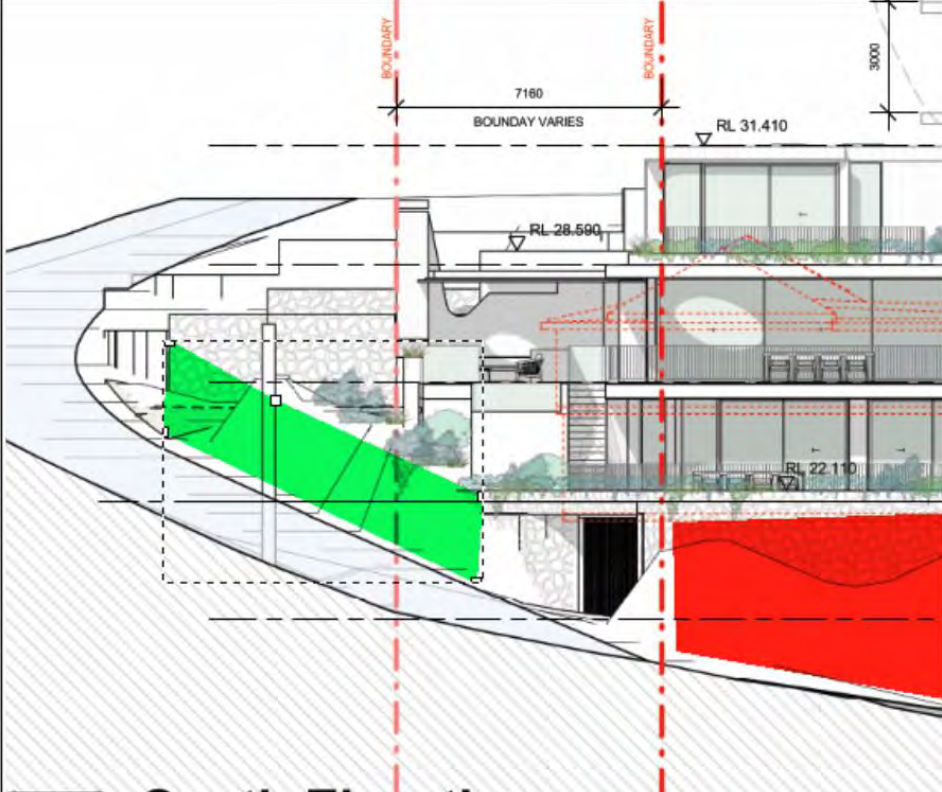
Where relevant, these conditions have been imposed.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	Supported - subject to conditions <u>Additional Information Comment 28/11/23:</u> The amended plans are noted.

Internal Referral Body	Comments
	To allow the reasonable sharing of views for the applicant and neighbours all plant spec with the requirements outlined in the conditions of consent. <u>Original Comment:</u> <i>The Arboricultural Impact Assessment (AIA) identified five trees of which trees 1 and 2 are exempt by species and as such can be managed or removed at the discretion of the Council. Trees 4 and 5 are located outside the property boundaries and as such must be retained supported by the Arborist's findings. Tree 3 is of high significance and will be retained, within the AIA a Project Arborist shall be engaged to supervise all work on the tree protection.</i> <i>Landscape Referral will only assess the proposed works within the property boundaries, retaining walls proposed in the road reserve shall be deferred to Council's Road Assets</i> <i>The landscape proposal is generally supported and all proposed planting shall be installed in accordance with the requirements outlined in the conditions of consent. All on slab landscaping shall meet Council's requirements. All Rhaphiolepis species shall be substituted with a suitable alternative as an environmental threat.</i>
NECC (Development Engineering)	Supported - subject to conditions The proposed works are in Zone 1 of Region 3. The development requires on site detention submitted plans. A geotechnical and traffic report has been provided. I have no objection.
Road Reserve	Supported - subject to conditions Amended Comments 17/11/2023 The amended plans (including the "Road Asset Plans" - A400-A406) provide greater detail on existing retaining walls in the road reserve. The proposed works (removal of walls, regrading and landscaping to address the existing walls) are supported. Previous Comments (now redundant@17/11/23): The works impact the existing dry stacked sandstone wall immediately adjacent to the back boundary of the property. The proposal includes demolition of part of the wall for driveway construction. It is unclear as to the ownership of the retaining wall and whether it has been constructed by the subject property given it is only located around the subject property or has been built by Council in connection with the construction of the road (circa 1961). It is also not possible to establish the condition of the wall although an inspection of the wall on 11/10/2023 by Council confirmed its poor condition. The inspection does however raise concerns regarding the impact of the works on the stability of the wall. The geotechnical report does not discuss any specific issues in relation to the existing wall stability given the basement excavation through the wall and directly behind it. Concerns exist in relation to the proposed works impacting on the existing dry stacked wall uphill of the dry stacked wall. The cement grouted wall would appear to have been added to the property and is therefore considered a private structure. It appears the proposed pool excavation of the stone wall and excavation of the pool may impact the stability of this wall (area of concern). Details or consideration appears to have been given to this impact. The excavation for the basement to the south of the driveway entry (and along the south side of the driveway) will result in a large volume of fill between the existing dry stacked stone wall and may result in instability due to the weight of the fill.

Internal Referral Body	Comments
	or consideration appears to have been given to this impact. The embankment adjacent to the southern boundary (shown in red in image below) is a appears incorrect where it depicts a wall behind the kerb . The FFL of the basement is : frontage and no details are provided as to the treatment of this embankment. The base need to ensure adequate footings are provided and no reliance is placed on the road re The location of the driveway and its design limits the available sight distance which could design. Council's Development Engineering Team to require an Application for Infrastructure Works the design and adjustments to the dry stacked sandstone retaining wall and other retain access is considered. The application for Infrastructure Works shall also address the pr to ensure these works comply with Council standards. A Council approval is to be subm of the Construction Certificate. Council's Property Team should receive a referral to advise whether a Road Reserve Co the former Manly Council Policy for the structural works across the verge. The demolitic may require the cancellation of the existing road reserve lease. The proposed stone wall with letterbox is not supported given the extent of encroachme fencing off/alienating the area for private use. The proposed wall should be removed ar that 600x600mm Development Engineering to require the submission of a report on the condition of the r dilapidation report is to be completed and submitted for Council assessment and approv prior to the issuing of the construction certificate to ensure the proposed works are unlik A Council approval is to be submitted to the Certifier prior to the issue of the Constructio against damage the retaining wall shall be required in the amount of \$????,??? Accordingly, it is not possible to support the proposed works given the lack of detail pert road reserve and consideration of the construction methodology impacting on the walls. need for planting on the road reserve but insufficient details are provided including any ' desired outcome.

Internal Referral Body	Comments
	 2 South Elevation

Internal Referral Body	Comments
	The diagram is a detailed site plan. A yellow shaded area is labeled 'INACCESSIBLE STEEP ROCK/BUSH'. To its left is a 'CONCRETE' area. A 'METAL FENCE ON STONE RET. WALL' is shown with a bearing of 280° and a distance of 21'. Another fence section is labeled '20" 20.65 TW + 20.45 TW'. A 'DENSE' area is marked with a bearing of 190° and a distance of 11.125'. A 'GARDEN' area is also indicated. Pavement areas are labeled 'PAV' with various points like 21.08 PAV, 21.42 PAV, 21.47 PAV, 21.50 PAV, and 22.14 PAV. A 'SETBA (5.90)' is noted. Elevation points include 15.46 GF, 15.55 TKB, 15.77 TKB, 15.95 GF, 16.12 TKB, 16.24 BW, 16.67 TKB, 16.97 GF, 17.13 TKB, 17.59 TKB, 17.70 G, 18.02 BW, 18.21 B, 17.5, 17.0, 17.29 CL, 19.77 GDN, 20.80 TW, 20.87 TW, 21.85 TFCE, 21.80 TFCE, 21.73 TFCE, 21.71 TFCE, 21.79 TFCE, 22.08 TFCE, 21.10 TW, and 22.14 TF. Bearings of 280°, 190°, and 341° are shown. Other labels include 'DSSING', 'CON', 'EO', 'S', 'S', 'WELD', 'MESH', and 'PA'.
Strategic and Place	Supported - subject to conditions HERITAGE COMMENTS

Internal Referral Body	Comments
Planning (Heritage Officer)	Discussion of reason for referral
	The proposal has been referred to Heritage as the subject site contains is within the vi listed item with local significance:
	Item I1 - Harbour foreshores - Manly municipal area boundary adjacent to the Harbo
	Details of heritage items affected
	Details of this heritage item, as contained within the Northern Beaches Heritage Invent
	Item I1 - Harbour foreshores
	<u>Statement of significance</u>
	Natural landscape type - Aesthetic.
	<u>Physical description</u>
	Length of foreshore including natural and built elements of the landscape. Rocky sand beaches, mud flats and sandstone retaining walls and timber structures.
	Other relevant heritage listings
	SEPP (Biodiversity and Conservation) 2021
	Australian Heritage Register
	NSW State Heritage Register
Traffic Engineer	National Trust of Aust (NSW) Register
	RAIA Register of 20th Century Buildings of Significance
	Other
	Consideration of Application
	The application seeks consent for the demolition of the existing site structures and the new dwelling and a swimming pool. The existing property is a 1 & 2 storey building tha in the early 1900s. The original building was one of the early constructions in the area, extended and altered.
	Given the steep topography of the subject site and the separation between the heritage proposed works, the proposal is considered to not have an adverse impact upon the h significance.
	Therefore, no objections are raised on heritage grounds, subject to one condition.
	<u>Consider against the provisions of CL5.10 of MLEP 2013.</u>
	Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided?
	Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been p
	Supported - subject to conditions
	Amended comments relating to the amended report and plans – 22/11/2023

Internal Referral Body	Comments
	The Transport Assessment Addendum prepared by ONETRAFFIC dated 15 November (Master Set), Revision B prepared by EMK Architects dated 24/05/2023 have been reviewed by the Council. All the Council's comments dated 09/10/2023 on the first version of the traffic report have been addressed. Here are the changes that have been made: • Turning plots for access to and from the garage into/out of Bligh Crescent have been amended to allow access for a B99 vehicle to and from the garage is possible from the street with parked vehicles uphill of the driveway. • The garage doorway width of 6m and the dimensions of the internal parking spaces have been amended architectural plans. • The driveway has been assessed in terms of sight distance, with some cutting and widening of the driveway to improve sight lines for egressing vehicles. <u>Conclusion</u> All the Council's comments dated 09/10/2023 on the first version of the traffic report have been addressed. Subject to conditions, the application can be supported on traffic grounds. Original Comment dated 09/10/2023 <u>Proposal description:</u> Demolition works and construction of a dwelling house including a double garage. The traffic team has reviewed the following documents: • Plans (Master Set) – Drawing No. A0101, Revision A, designed by EMK Architects • Transport Impact Assessment report, (Reference Number 2318), prepared by ONETRAFFIC • The <i>Statement of Environment Effects</i> prepared by BBF Town Planners dated 02 March 2023. • Pre-Lodgement Advice (PLM2022/0010) dated 02 March 2023. <u>Parking requirement and design:</u> • The Manly DCP applies to the subject site. Under the DCP, two (2) parking spaces are required for a dwelling house. As two (2) parking spaces (in the form of double garage) have been provided comprising a residential dwelling provides adequately for the parking needs of the site. • The double garages' layout is compliant with Australian Standards AS2890.1-2004 parking requirements. The garage doorway width of 5m has been measured; however, the architectural plans show a width of 6m. The plans should be accompanied by dimensioned drawings of the driveway and parking spaces. • The B85 vehicle turning plots accessing each car parking space in the double garage have been identified in the traffic report. These movements seem to require the driver to stop and then turn into the garage.

Internal Referral Body	Comments
	acceptable under Appendix B4.8 of AS/NZS 2890.1, it demonstrates that an inconvenience for drivers will exist. - No plots for access to and from the garage into/out of Bligh Crescent have been provided. Swept path plots for B99 vehicles are required to demonstrate that access to and from the street as required by AS2890.1 clause B.2. <u>Access Driveway</u> - The driveway is located at the southwest corner of the property on a bend where the existing driveway is also located on a bend and also suffers from constraints. The new driveway allows for turning on the property to facilitate forwards entry and is considered an improvement on the existing situation and, noting the low volume of traffic and unfavourable terrain the new driveway location is supportable. It is not permitted opposite the driveway parking is currently permissible uphill on the side of Bligh Crescent and aerial photo imagery suggests that parking does not require plots are required to demonstrate that the offstreet parking area and driveway can accommodate a B99 vehicle to enter and exit the site from the street as required by AS2890.1 clause B.2. - The driveway is measured to be approximately 5 meters wide. At the PLM requirements, adjustments to the rock/stone wall to improve sightlines should be detailed on the plans relating to sightline improvements and the only reference in the plans is to a convex mirror. The introduction of convex mirrors are rarely supported by the standards as they give a poor perception of the approach speed, direction and position of oncoming vehicles. Improved by design amendments these should be pursued. The proposed cutting back of sight distance in accordance with AS/NZS2890.1:2004 and while full compliance is not feasible a review should be undertaken with some cutting back of the retaining wall to improve sight lines for egressing vehicles anticipated. Any adjustment to the sight distances must be detailed on the plans. - It is noted that a vertical clearance plot for a B85 vehicle has been included to demonstrate accessing the garage and demonstrating that there is adequate overhead clearance and bottoming do not occur. <u>Traffic Impact</u> - The proposal will generate minimal vehicular traffic during the peak, and it is considered that the implications in terms of road network capacity performance are minimal. <u>Conclusion</u> While the proposed changes appear supportable additional information is required to confirm a) to demonstrate that access to and from the property with parked vehicles on Bligh Crescent and b) to demonstrate that adequate sight lines are available and if not to adjust driveway width and cut back the embankment to ensure that access is achievable.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development. Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1395956S dated 30 June 2023).

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

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

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 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	7.1m	N/A	Yes
Floor Space Ratio	FSR: 0.4:1 (199.96m ²)	FSR: 0.6:1 (299.7m ²)	49.9%	No

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.4:1 (199.96m ²)
Proposed:	0.6:1 (299.7m ²)
Percentage variation to requirement:	49.9%

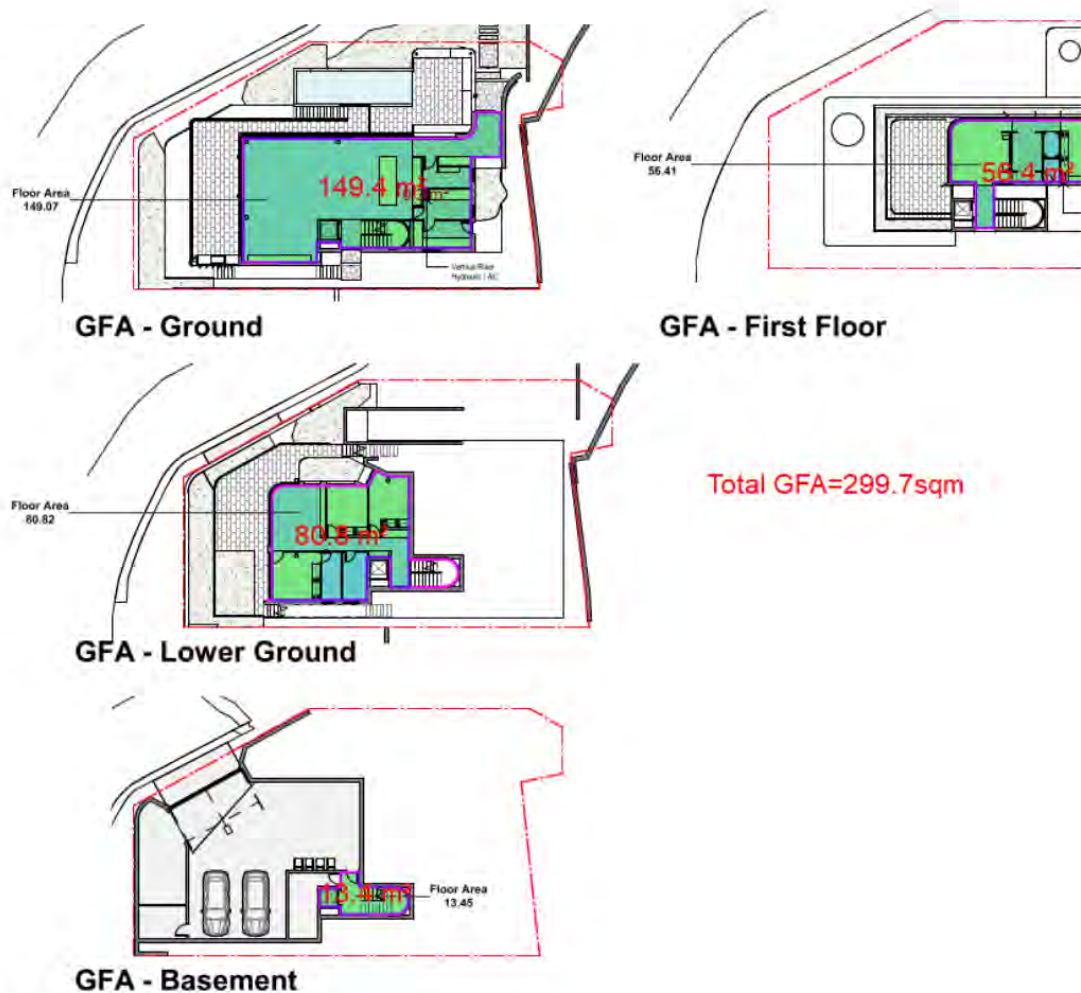


Figure 1. Floor space calculation diagram.

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

- (1) The objectives of this clause are as follows:
- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular

circumstances.

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

Comment:

Clause 4.4 - Floor space ratio development standard is not expressly excluded from the operation of this clause.

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

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

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

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

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

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

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

Comment:

The Applicant's written request (attached to this report as an Appendix) 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:

- *I have formed the opinion that sufficient environmental planning grounds exist to justify the variation including the compatibility of the height, bulk and scale of the development, as reflected by floor space, with the built form characteristics established by adjoining development and development generally within the site's visual catchment.*
- *Further, the variation provisions contained at clause 4.1.3.1 of Manly DCP reflect an acceptance that the FSR standard on undersized allotments does not provide for the orderly and economic use and development of the land and in my opinion represents an abandonment of the FSR standard on undersized allotments. The proposal satisfies such provisions.*
- *The proposed development achieves the objects in Section 1.3 of the EPA Act specifically:*
 - The proposal promotes the orderly and economic use and development of land (1.3(c)).*
 - The development represents good design (1.3(g)).*
 - The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(h)).*

It is agreed that the proposed development is compatible within the immediate locality and does not rise to any adverse amenity impacts, as the built form is appropriately modulated and sited, with consideration of the site constraints. In addition, the proposal achieves an acceptable level of compliance with the relevant built form controls and meets the objectives of these controls. Furthermore, it is noted that the proposed dwelling is located on an undersized lot as per Clause 4.1.3 of MDCP and complies with the variations afforded under this control. Overall, the requested variation is reasonable in terms of its impacts and strict compliance with this development standard would not provide a net benefit to the immediate locality, as the proposal is considered an appropriate design within a low-density residential setting, which preserves an acceptable level neighbourhood amenity.

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Floor space ratio development standard and the objectives of the R1 General Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The immediate streetscape is characterised by a fluctuating slope to Peach Tree Bay. As such, this creates a range of varying built forms along Bligh Crescent, with regards to height and scale.

The proposed dwelling is appropriately stepped to follow the natural topography of the land, resulting in a maximum building height of 7.1 metres when measured from ground level (existing). The height of buildings development standard is designed to control building height ensuring the development is consistent with that of the surrounding area. The proposal is 1.4 metres lesser than the maximum (8.5 metres) and is considered consistent with the height of surrounding low density development.

The proposal is suitably articulated with varying setbacks, open balconies, fenestration and selective finishes. In addition, the proposed dwelling provides acceptable building separation from the front boundaries to allow for the establishment of landscaping that is of a size and scale to reasonably screen the built form. In this regard, the proposal has been appropriately designed and sited to minimise bulk and scale, thereby remaining consistent with the existing and desired streetscape character.

It is considered that the development satisfies this objective.

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:

A number of non-prescribed trees will be removed and replaced with native plant species suitable for the coastal location. The proposed scale and bulk does not remove any important landscape features or obstruct townscape features from overlooking properties adjacent the site.

It is considered that the development satisfies this objective.

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

Comment:

The proposed dwelling is well articulated, steps down with the topography of the land, and is surrounded by landscaped area. As such, an appropriate visual relationship will be maintained.

It is considered that the development satisfies this objective.

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

Comment:

The stepping with topography, articulation of the built form and appropriate separation from neighbours, ensures minimisation of environmental impact so that appropriate enjoyment of adjoining land and the public domain, is fostered.

It is considered that the development satisfies this objective.

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 objective does not apply as the site is not within a business zone.

It is considered that the development satisfies this objective.

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 seeks the demolition and construction of a detached dwelling, which is a permissible use in this zone. The new dwelling is considered to provide for the current housing needs of the occupants of the site and is compatible with that of nearby comparable development.

It is considered that the development satisfies this objective.

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

Comment:

No change to the existing residential land use is proposed.

It is considered that the development satisfies this objective.

Conclusion:

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

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

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

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

6.2 Earthworks

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

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

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

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

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

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

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

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

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

- (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 watercourse, drinking water catchment or environmentally sensitive area*

Comment: The proposal as conditioned will not adversely impact any nearby environmentally sensitive areas.

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

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

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

6.9 Foreshore scenic protection area

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

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

Comment:

The subject site is substantially set back from nearby (approximately 36 metres+) foreshore areas. The proposed development is not of a size or scale to have any adverse impact upon the visual amenity of the foreshore. In this regard, the proposal has appropriately designed to avoid any adverse impacts to the above matters.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 499.9m ²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	East: 7.5m (based on gradient 1:6)	6.7m	N/A	Yes
	West: 7.4m (based on gradient 1:6.8)	6.7m	N/A	Yes
4.1.2.2 Number of Storeys	2	3	50%	No
4.1.2.3 Roof Height	Parapet Height: 0.6m	0.5m	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m (South)	Basement - 0.1m Lower ground floor - 2.2m Ground floor - 4.1m First floor - 9.1m	31.7% - 98.3%	No
4.1.4.2 Side Setbacks and Secondary Street Frontages	North: 2.2m (based on wall height of 6.5m)	Basement - 8.7m Lower ground floor - 8.7m Ground floor -	40.9%	No

		1.3m First floor - 3.5m		
	East: 2.2m (based on wall height of 6.7m)	Basement - Nil Lower ground floor - 1.7m Ground floor - 1.7m First floor - 2.7m	22.7% - 100%	No
	Windows: 3m	1.0m - 2.7m	10% - 66.7%	No
	Secondary street frontage: Prevailing setback (West)	Basement - 1.4m Lower ground floor - 1.3m Ground floor - 0.5m First floor - 3.0m	N/A	Yes* (Merit)
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area	64.1% (320.4m ²)	N/A	Yes
	Open space above ground 25% of total open space	10.9% (34.9m ²)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space	44.0% (141m ²)	N/A	Yes
	2 native trees	> 2 trees	N/A	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	>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	6.0m	N/A	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	3.4m	240%	No
	Outside of front setback	Within front setback	N/A	No
	1m curtilage/1.5m water side/rear setback	N: 11.2m	N/A	Yes
		E: 13.7m	N/A	Yes
	Area of Pool <30% of total open space	6.2% (20.1m ²)	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.1 Streetscape (Residential areas)	No	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	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
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	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
4.1.1.1 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	Yes	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
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

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

- iv) avoid elevated structures constructed on extended columns that dominate adjoining sites such as elevated open space terraces, pools, driveways and the like.*
- 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;*
- vi) visually improve existing streetscapes through innovative design solutions; and*
- 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:

In response to the above criteria, a detailed assessment is carried out below:

- i) The external colours and materials consists of dark and earthy tones and stone cladding materials, which harmonise with the natural environment and will provide an appropriate transition of development from the nearby foreshore areas. As such, the proposal complements the predominant form, character and finishes of contemporary buildings in the locality.
- ii) As discussed throughout this report the proposed scale and bulk does not remove any important landscape features or obstruct townscape features from overlooking properties adjacent the site.
- iii) The proposal presents a level of bulk and height at the street frontage that is comparable to surrounding developments by minimising elements that appear over two-storey.
- iv) The subject site is largely enclosed by street frontages to the west and south. The proposed private open space area is located within the western (secondary) street frontage, which experiences a notable cross-fall to the south. As a result, the proposal includes elevated open space terraces and a pool within the western frontage. However, the proposal has been amended to provide a suitable landscape buffer between the private open space and the western street frontage to ensure that works do not dominate the streetscape.
- v) The subject site is within vicinity of the Harbour Foreshores heritage item. In summary the proposal was referred to Council's Heritage department proposal who provided the following comment; *"Given the steep topography of the subject site and the separation between the heritage item and the proposed works, the proposal is considered to not have an adverse impact upon the heritage item or its significance."*
- vi) The proposal will revitalise the site with a contemporary built form and also remove the existing carport that is partly located on the road reserve. The proposal's design is considered an appropriate response to the site constraints without giving rise to any adverse streetscape impacts.
- vii) As above, the building materials and finishes complement those dominant in the locality.

3.1.1.2 Front Fences and Gates

- a) Notwithstanding the maximum height provisions for fencing at paragraph 4.1.10; the siting, height and form of boundary fences and walls should reflect the fencing characteristic of the locality, particularly those of adjacent properties. All fencing and wall materials must be compatible with the overall landscape character and the general appearance of the building and the streetscape.*
- b) Boundary fences or walls must not be erected where they would conflict with the local character.*
- c) Front fences and gates must be constructed in materials that complement the architectural style and period of the dwelling and improve the streetscape. In particular, fencing adjacent to a public road or*

place must not be constructed in metal cladding, powder coated or otherwise.

d) Gates must not encroach on public land when opening or closing.

Comment:

In response to the above criteria, a detailed assessment is carried out below:

a) The proposal involves the construction of new front boundary walls (up to 3.5 metres high) that will exceed the 1 metre requirement specified within Clause 4.1.10 of the MDCP 2013. In addition, fences up to 1.8 metres are proposed along the western frontage.

The front boundary walls will be replacing existing structures that are required to stabilize the site, given the significant slope constraints. In addition, the proposed fence is largely set back 2.0 metres and will be situated along western frontage, enclosing the proposed private open space. Amended plans have been provided to ensure a suitable landscape buffer is provided with the setback to offset any unreasonable visual impact. Furthermore, the proposed fence and boundary wall have made appropriate level changes, which follows the undulating topography. As such, the proposed fence will not become overbearing upon the streetscape.

Overall, the proposed fence has incorporated a site responsive design for a highly constrained site to ensure that a reasonable level of privacy is provided for the occupants of the site, while retaining compatibility within the surrounding streetscape.

b) The subject site is considered unique in nature given that it is a corner lot and the majority of the site boundaries are highly slope affected. Therefore, the varied fence height is considered reasonable to protect the subject site's private open space areas. Notwithstanding this, the proposed fence has responded appropriately to the topography of the land and will incorporate landscaping within its design to mitigate the visual impact within the streetscape. Overall, the proposal results in acceptable streetscape outcomes, which will prevent conflict with the local character.

c) The proposal's design will be compatible within the established built environment.

d) The proposed fence does not involve a gate that fronts the street.

Based on the above assessment, it is concluded that the proposal does satisfy the streetscape requirements for fences.

Merit consideration

With regard to the consideration of a variation, the proposal is considered against the underlying objectives of the control as follows:

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

Comment:

As above, the visual impact of the works have been mitigated by a site responsive design that incorporates landscaping to minimise the built form, when viewed from the street.

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

Comment:

The proposal, will be compatible with the established streetscape character along Bligh Crescent.

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

Comment:

The proposal's design will include soft landscaping alternatives to remain consistent with the established streetscape character.

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

3.4.3 Maintenance of Views

Merit consideration:

Submissions received raised concern regarding potential view loss as a result of the proposed development. Height poles were erected and certified for accuracy. View loss inspections were undertaken at the No. 24 Bligh Crescent north of the subject site.

The development is considered against the Objectives of the Control:

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

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

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

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

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

Comment:

No. 24 Bligh Crescent

The property is upslope and adjacent to the subject site's northern boundary. There is currently a two-storey dwelling house that enjoys views to the southeast, south, and west across an approximate 135-degree arc. The views include landmarks such as Sydney CBD on the horizon. Other notable features

encompass Peach Tree Bay, Sugar Loaf Point, Fig Tree Cove, associated foreshore areas, and the ocean.

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:

No. 24 Bligh Crescent

This property enjoys views over its western front boundary and over the northern side boundary of the subject site. These views can be enjoyed from both standing and seated positions within internal and external areas of the dwelling, spanning the first and ground floors, as indicated in the following figures:



Figure 2: Partially Affected View - Kitchen facing southwest on the first floor, across the side boundary from a standing position.



Figure 3: *Unaffected View - Balcony facing west on the first floor, across the front boundary from a standing position.*



Figure 4: Affected View - Studio facing southwest on the ground floor, across the side boundary from a seated position.



Figure 5: Partially affected View - Terrace facing southwest on the ground floor, across the side boundary from a seated position.



Figure 6: Affected View - Front yard facing south on the ground floor, across the side boundary from a standing position.

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

Comment:

No. 24 Bligh Crescent

As indicated in the figures above (Figures 2 - 5), this property has expansive ocean views that are obtained over the southern side boundary and western front boundary from both levels of this dwelling.

The dwelling is two storey with the kitchen, living, dining and outdoor entertaining areas sited in the western portion of the first floor.

As detailed in Step 1, and visually represented in Step 2, the views over the front boundary (west)

include views of Sugar Loaf Point, Fig Tree Cove, associated foreshore areas and the ocean. These views will not be impacted by the proposed development.

From the first floor kitchen (See Figure 2.), the view loss involves a partial reduction of water views. Expansive views over the dwelling will be generally maintained from this area. In this regard, the view loss from this area is considered negligible.

From the ground floor studio (See Figure 4.), the view loss involves a reduction of water views. However, views will be maintained on both sides and over the proposed development. Given that the views are from a studio, and obtained from seated positions over a side boundary, the view loss is considered minor from this area in the context of the above principles.

From the ground floor terrace (See Figure 5.), the view loss involves a partial reduction of water views. Expansive views to the west of the dwelling will be generally maintained from this area. In this regard, the view loss from this area is considered negligible.

From the front yard (See Figure 6.), the view loss involves a reduction of water views. However, views will be maintained on the western side and over the proposed development. Given that the views are directly across the side boundaries, from an outdoor area, the view loss is considered minor from this area in the context of the above principles.

This assessment has considered the views obtained for the whole of the site, and it has found that the extent of view loss from this property is negligible to minor, and from this property, an acceptable level of view sharing is obtained. It is noted that at various parts of the property all parts of the current view are available, notwithstanding that in the western portion of the site, part of the available view corridor will be modified.

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 skillful 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:

Clause 3.4.3 Maintenance of Views and the intent of Tenacity goes towards the idea of view sharing - rather than view retention. The proposed development is not assessed as having any 'devastating' impacts as it will not block the entirety of anyone's views. However, it is noted that the proposal will result in the loss of views that are clearly important and valuable to the residents of No. 24 Bligh Crescent. Notwithstanding, the proposed first floor complies with the critical controls relating to view loss, being building height and side setbacks. While it is acknowledged that the proposed development breaches the Floor Space Ratio development standard. The total severity of impacts upon water views is not considered to be unreasonable. A more skillful design is not likely to be able to achieve a reasonable scaled development while reducing view impacts to neighbouring properties.

Given the above considerations, the proposed development is considered to be an acceptable outcome that would be reasonably expected for the site. On balance, the proposed development will result in a reasonable sharing of views.

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.

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

Description of non-compliance

This Clause relies upon the objectives of Clause 4.3 under MLEP 2013.

Clause 4.1.2.2 Number of Storeys also requires that the building must not exceed two (2) storeys. Basements are not included as a storey.

The proposal partly exceeds up to three (3) storeys as displayed in the below diagram.

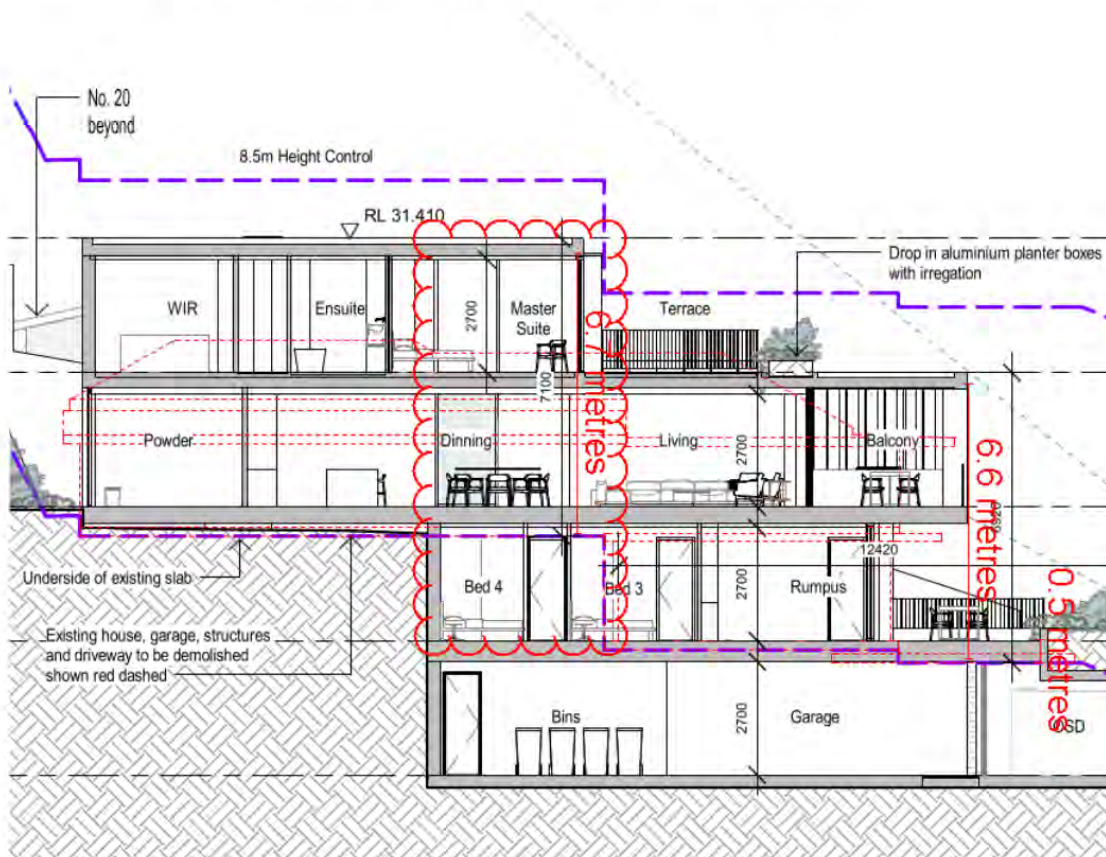


Figure 7. Number of storeys diagram.

Merit consideration:

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

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

Comment:

The proposed height of the building is minimised by a flat roof and suitable articulation. The visual impact upon the streetscape will be acceptable and not unreasonable in this residential setting, as the non-compliant proportions are largely sub terrain and suitable planting is proposed along the property boundaries. In addition, the building has been suitably stepped with the site topography and largely presents as a maximum two (2) storey dwelling, when viewed from the street.

b) to control the bulk and scale of buildings,

Comment:

The proposed first floor adequately steps in at the front portion of the building where the non-compliance occurs, providing generous setbacks that exceed the minimum requirements. In addition, the proposed building is reasonably articulated using recessed and modulated walls, fenestration, balconies, elevated pool, eaves and changes in materials to break up built form. In this regard, the proposal has been designed with consideration of the site constraints and will not give rise to adverse building bulk.

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:

View sharing is discussed elsewhere within this report and the proposal has been found to provide a suitable view sharing outcome.

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 solar impacts of this development are minimal and acceptable in terms of their impact on habitable rooms of the adjoining properties and public open space.

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 external colours and materials consists of dark and earthy tones and stone cladding materials, which harmonise with the natural environment and will provide an appropriate transition of development from the nearby foreshore area.

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.

4.1.3 Floor Space Ratio (FSR)

Whilst the proposed floor area does not exceed the maximum variation to FSR for undersized lots as described under this clause, the development is technically non-compliant with the FSR requirement as prescribed under Clause 4.4 of the Manly LEP 2013. Refer to the discussion under Clause 4.6 of this report for the relevant considerations concerning the varying of this development standard.

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

Description of non-compliance

Front setback

Given the location of the subject lot, the Applicant has defined the western and southern boundaries as a front boundary.

The proposal will breach the required front setback along the western boundary to accommodate a swimming pool and private open space area. In addition, the southern setback area includes the garage, associated terrace on top of the garage and ground floor balcony within the 6 metre front setback.

The remaining elements of the building exceed the front setback requirement.

It is noted that Clause 4.1.6.1 'Parking Design and the Location of Garages, Carports and Hardstand Areas' of the MDCP provides the following regarding garages forward of the building line:

b) Garage and carport structures forward of the building line must be designed and sited so as not to dominate the street frontage. In particular:

i) garages and carports adjacent to the front property boundary may not be permitted if there is a reasonably alternative onsite location;

In regards to the proposed garage the following is noted:

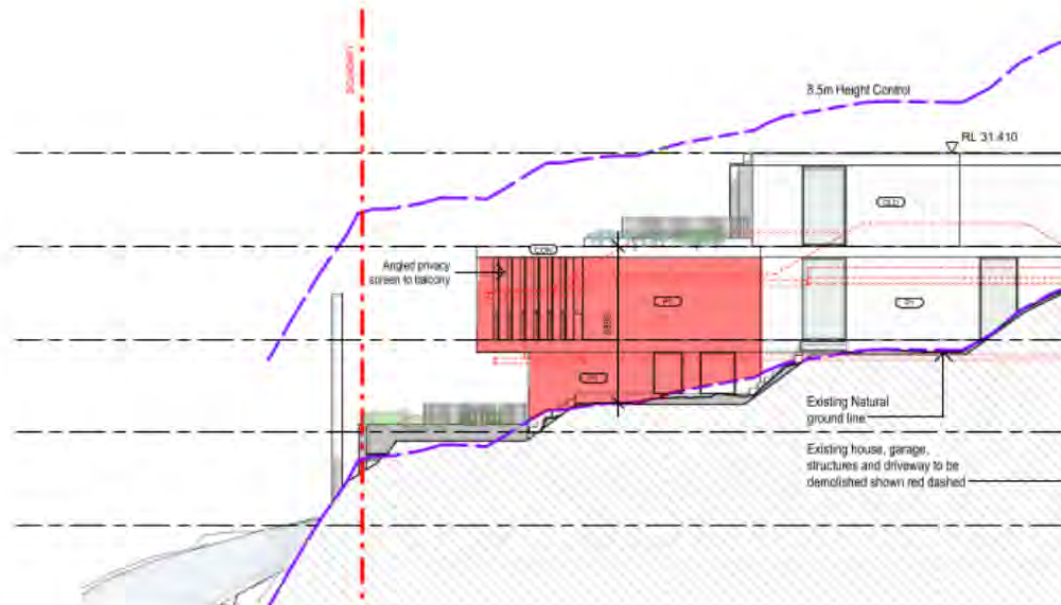
- a) The existing site access is unusual, in that the site is accessed via a driveway and carport, which largely sit within the adjoining Road Reserve. These structures are proposed to be removed and the area reinstated with native planting to compliment the surrounding landscape character.
- b) Relocating the site access to the southwest corner has the effect of allowing the floor levels of the building to be significantly dropped to allow for a more low scale building that has less impact of view corridors.
- c) The requirement to push the garage deeper into the site to comply with a 6 metre front setback would create a large void and further excavation of the front setback area.
- e) The gradient at the front of the site is very steep and an at-grade driveway would lead to further engineering challenges or undesirable driveway gradients.

Therefore, a reduced setback garage that is 'buried' into the front of the site is considered an optimal outcome with regards to site access and maintaining amenity (solar access and view sharing) for the surrounding sites.

Side setback

The proposal's eastern elevation involves a varied side setback between nil - 1.7 metres, which

represents a variation up to 100% of the 2.2 metre minimum requirement. The non-compliant elements are confined to specific areas: the basement (with nil setback), the lower ground floor bedroom and bathrooms (with a 1.7-metre setback), and the ground floor living room and balcony (also with a 1.7-metre setback).



East Elevation

Figure 8. Approximate area of easter side setback non-compliance.

In addition, the proposal has a minor breach of the northern side setback for the entry, involving a varied side setback between 1.3 metres - 1.6 metres, which represents a variation up to 40.9%.

Windows

The proposed eastern elevation includes five (5) windows within 3.0 metres of the eastern boundary.

Swimming pool

The proposal involves the construction of an above-ground swimming pool, which will be situated in western frontage. The encroachment caused by these works has been assessed against the objectives of clause 4.1.9 (Swimming Pools, Spas and Water Features) under Manly DCP. In summary, the proposal is consistent with the objectives of clause 4.1.9, subject to conditions.

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 discussed in Part 3.1.1 (Streetscapes) of this report, the proposal as amended has been appropriately designed to mitigate unreasonable impacts on the streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street. In addition, the minor breaches to the side setbacks will not have a visible street appearance or influence the character of the street.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The works are largely orientated to the street and will not allow for overlooking into adjoining private land or usable public open space. Additionally, due to the aspect of the allotments and natural topography, the proposal does not result in the unacceptable overshadowing of private land or usable public open space. As discussed in detail within part 3.4.3 of this report, the proposal will achieve reasonable view sharing. The proposed setbacks are considered to be sufficient for a low density residential development, particularly given the works do not result in unreasonable amenity impacts in terms of overshadowing, view loss, privacy or visual bulk. Furthermore, the proposal as amended will not preclude road visibility or result in unsafe traffic conditions.

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

Comment:

The proposed setback breach is considered to be acceptable given the characteristics of the site and the absence of any adverse amenity impacts.

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:

Amended plans have been provided by the applicant to ensure that suitable deep soil zones are provided around the built form to enhance the landscape setting.

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

Comment:

The land is located in a bushfire mapped area and a report recommended appropriate asset protection zones.

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.

4.1.9 Swimming Pools, Spas and Water Features

Description of non-compliance

The proposed pool is located western setback area, which is considered the site's secondary street frontage.

The finished floor level of the swimming pool is located up to 3.4 metres above the existing ground level, which exceeds the numeric limit of 1 metre.

Merit consideration

With regard to the consideration of a variation, the proposed development is considered against the underlying objectives of the control as follows:

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

Comment:

Overlooking from the pool is acceptable, given that it is orientated directly towards the street and will not allow for overlooking into adjoining private land. Furthermore, a condition has been recommended which seeks to limit the noise of sound producing plant to no more than 5dB (A) above the background level, which will minimise the impact of the filter noise on adjoining properties. Overall, the proposal meets this objective.

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

Comment:

The subject site has dual frontages along Bligh Crescent. As above, the proposed pool will be located within the western setback, which is considered the secondary frontage, given the orientation of the proposed dwelling. Amended plans have been provided to ensure that the suitable separation is provided between the pool and the street boundary, to allow the establishment of vegetation and screen planting. In this regard, the proposal is appropriately located in the secondary frontage and will not give rise to adverse streetscape impacts.

Objective 3) To integrate landscaping.

Comment:

The applicant proposes additional native landscape treatment along the western boundary to minimise the visual impact of the works.

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

Comment:

The subject site is located within bushfire prone land and satisfies this objective.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the 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 \$20,006 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,000,589.

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 4.4 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.

In summary, the application has been assessed with regard to the relevant Manly 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 DPP with a recommendation for approval. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.4 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 DA2023/0898 for Demolition works and construction of a dwelling house including swimming pool on land at Lot 12 DP 872763, 22 Bligh Crescent, SEAFORTH, 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
A0006	A	Demolition Plan	EMK Architects	24 May 2023
A0009	B	Site Plan	EMK Architects	24 May 2023
A0101	B	Floor Plan - Basement	EMK Architects	24 May 2023
A0102	B	Floor Plan - Lower Ground	EMK Architects	24 May 2023
A0103	B	Floor Plan - Ground Floor	EMK Architects	24 May 2023
A0104	B	Floor Plan - First floor	EMK Architects	24 May 2023
A0106	B	Roof Plan	EMK Architects	24 May 2023
A0109	B	Driveway Plan	EMK Architects	24 May 2023
A0110	B	Driveway Section	EMK Architects	24 May 2023
A0201	B	Elevations - Sheet 1	EMK Architects	24 May 2023
A0202	B	Elevations - Sheet 2	EMK Architects	24 May 2023
A0301	B	Sections - Sheet 1	EMK Architects	24 May 2023
A0302	B	Sections - Sheet 2	EMK Architects	24 May 2023
A0400	B	Road Asset Plan 01	EMK Architects	24 May 2023
A0401	B	Road Asset Plan 02	EMK Architects	24 May 2023
A0402	B	Road Asset - Section 1	EMK Architects	24 May 2023
A0403	B	Road Asset - Section 2	EMK Architects	24 May 2023
A0404	B	Road Asset - Section 3	EMK Architects	24 May 2023
A0405	B	Road Asset - Section 4	EMK Architects	24 May 2023
A0406	B	Road Asset - Section 5	EMK Architects	24 May 2023
A0407	B	Road Asset - Elevation	EMK Architects	24 May 2023

A0701	A	Schedule of Colours and Finishes	EMK Architects	24 May 2023
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Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Arboricultural Impact Assessment and Management Plan	-	Botanics Tree Wise People	April 2023
BASIX Certificate	1395956S	Certified Energy 1	30 June 2023
Bushfire Assessment Report	230820	Building Code & Bushfire Hazard Solutions	15 May 2023
Geotechnical Investigation Report	00	ESWNMAN	14 December 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	14 July 2023
Aboriginal Heritage Office	AHO Referral Response	22 November 2023

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

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

3. **Prescribed Conditions**

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

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

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

Reason: Legislative requirement.

4. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

approved in this consent including for the erection of any fences, hoardings or other temporary works.

- (k) Prior to the commencement of any development onsite for:
- i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished
- The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

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

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$20,005.89 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 \$2,000,588.83.

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**

a) details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided. Landscape treatment details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, and services connections. The following soil depths are required to support landscaping: 300mm for groundcovers, perennials, grasses and lawn; 600mm for shrubs; and 1m for small trees.

b) design certification shall be submitted to the Certifier by a qualified Structural Engineer, that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

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

8. **Stormwater Disposal**

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

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

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

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

The recommendations identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the construction certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

10. **Vehicle Crossings Application**

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 5 metres wide in accordance with Northern Beaches Council Standard Drawing A4/3330/1 N in accordance with Section 138 of the Roads Act 1993.

Note, driveways are to be in plain concrete only.

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

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

Reason: To facilitate suitable vehicular access to private property.

11. **Off Street Parking Design**

The Applicant shall submit a design for the parking facility in accordance with the relevant provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical Controls and Section 2.6 Design of Domestic Driveways.

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

Reason: Compliance with this consent.

12. **Traffic Engineering Report Recommendations have been incorporated into Plans**

The recommendations identified in the **Traffic Engineering Report by One Traffic dated 01.06.2023** are to be incorporated into the construction plans. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the construction certificate.

Reason: To ensure risk posed by vehicle movement is mitigated appropriately.

13. **Construction Traffic Management Plan**

A Construction Traffic Management Plan (CTMP) and report shall be prepared by a Transport for NSW accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed.
- Where access is required across private property not in the direct ownership of the proponent, such as a private road/driveway, community title road or right of way, the CTMP is to include:
 - Evidence of the legal right to use the access route or provide owners consent from the owners/strata/community association.
 - Demonstrate that direct access from a public space/road is not viable for each stage of works.

- Unless owner/strata/community associations consent is obtained, vehicles are not to exceed 24 tonnes or 7.5 metres in length (an assessment must be undertaken that the surface is capable of supporting up to 24 tonnes, otherwise the weight limit should be reduced in the CTMP). If consent is obtained, a copy must be included in the CTMP,
- No materials or plant are to be located or parked in the private road/driveway, community title road or right of way
- How any disruption to other users of the private road/driveway, community title road or right of way will be minimised and all users kept informed of likely disruption where the access will be closed or blocked for any given time.
- A Dilapidation report, including photographic surveys, of the private road/driveway/right of way must be included prior to any works commencing on the site. The report must detail the physical condition of the private road/driveway/right of way, and any other adjacent private property assets or adjacent public property that may be adversely affected by vehicles servicing the development site to undertake works or activity during site works.
- A requirement for Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, to be submitted after the completion of works and prior to the Occupation certificate. The report must:
 - Compare the post-construction report with the pre-construction report,
 - Clearly identify any recent damage or change to the private road/driveway/right of way and whether or not it is likely to be the result of the development works,
 - Should any damage have occurred, identify remediation actions taken.
 - Be submitted to Council with the Occupation Certificate.
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of

- vehicles shall be directed to the sediment control system within the site
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
- Proposed protection for Council and adjoining properties
- The location and operation of any on site crane

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

A copy of the approved CTMP must be kept on-site at all times while work is being carried out.

The development is to be undertaken in accordance with the Construction Traffic Management Plan approved by Northern Beaches Council Traffic Team.

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

14. Removal of Redundant Driveways

All redundant driveways shall be removed and reinstated to Council standard kerb and gutter. Suitably prepared plans shall be submitted to for an approval under 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.

15. 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.

16. Photographic Archival Record

A photographic archival record of the site is to be made of all existing buildings and structures (including interiors and exteriors and their setting), generally in accordance with the guidelines issued by the NSW Heritage Division of the Department of Planning and Environment.

This record must be submitted and approved by the Council's Heritage Advisor prior to the issue of a Construction Certificate and commencement of any demolition or works on-site.

The photographic record should be made using digital technology, submitted on archival quality CD-R disc, and should include:

- Location of property, date of survey and author of survey;
- A site plan at a scale of 1:200 showing all structures and major landscape elements;
- Floor plans of any buildings at a scale of 1:100;
- Photographs which document the site, cross-referenced in accordance with recognised archival recording practice to catalogue sheets. The extent of documentation will depend on the nature of the item.

Reason: To provide an archival photographic record of the site, including any buildings and landscape elements, prior to any works.

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. Sydney Water "Tap In"

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

19. Project Arborist

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged prior to any commencement of works on site to provide tree protection measures in accordance with

AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

a) The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, and in particular:

i) tree protection requirements under section 5 Recommendations.

b) All tree protection measures specified must:

i) be in place before work commences on the site, and

ii) be maintained in good condition during the construction period, and

iii) remain in place for the duration of the construction works.

The Project Arborist shall provide certification to the Certifier that all tree protection measures under AS4970-2009 have been satisfied, and the recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

Note: Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: Tree protection.

20. **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.

21. **Demolition Traffic Management Plan**

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

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

The DTMP must:-

- Make provision for all construction materials to be stored on site, at all times.
- The DTMP is to be adhered to at all times during the project.
- Specify construction truck routes and truck rates. Nominated truck routes are to be distributed over the surrounding road network where possible.
- Provide for the movement of trucks to and from the site, and deliveries to the site. Temporary truck standing/queuing locations in a public roadway/ domain in the vicinity

of the site is not permitted unless prior approval is granted by Council's Traffic Engineers.

- Include a Traffic Control Plan prepared by an TfNSW accredited traffic controller for any activities involving the management of vehicle and pedestrian traffic.
- Specify that a minimum fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measures.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes, structures proposed on the footpath areas (hoardings, scaffolding or temporary shoring) and extent of tree protection zones around Council street trees.
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the DTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities. These communications must be documented and submitted to Council prior to work commencing on site.
- Specify spoil management process and facilities to be used on site.
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of demolition. At the direction of Council, the applicant is to undertake remedial treatments such as patching at no cost to Council.

The DTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – "Manual of Uniform Traffic Control Devices", RMS' Manual – "Traffic Control at Work Sites".

All fees and charges associated with the review of this plan is to be in accordance with Council's Schedule of Fees and Charges and are to be paid at the time that the Demolition Traffic Management Plan is submitted.

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

22. **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.

Properties:

- 20 Bligh Crescent, Seaforth (Lot 2 DP 748068),
- 24 Bligh Crescent, Seaforth (Lot 11 DP 872763).

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.

23. Public Liability Insurance - Works on Public Land

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for

Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

24. Submission of Minor Encroachment Application for Works in the Public Road

Prior to commencing work in the public road reserve, the applicant is to submit a Minor Encroachments/ Constructions with Road Reserve Application for approval (Form #4033) of the landscaping work in the road reserve.

The applicant is to enter into any appropriate agreements with Council. All costs related to the above application are to be borne by the applicant.

No work shall commence until written approval has been obtained from Council.

Reason: To ensure private works within the public road reserve are constructed in accordance with relevant standards and Council's specification and assign the responsibility for the structures on Council's Road reserve to the property owner.

DURING BUILDING WORK

25. Tree and Vegetation Protection

a) existing trees and vegetation shall be retained and protected, including:

- i) all trees within the site not approved for removal, including trees and vegetation nominated for retention on the approved Plans,
- ii) all trees and vegetation located on adjoining properties,
- iii) all trees and vegetation within the road reserve.

b) tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with AS 4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be

retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,

- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS 4970-2009 Protection of trees on development sites,
- ix) the activities listed in section 4.2 of AS 4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS 4373-2007 Pruning of amenity trees,
- xi) the tree protection measures specified in this clause must: be in place before work commences on the site, be maintained in good condition during the construction period, and remain in place for the duration of the construction works.

c) the Principal Certifier must ensure that:

- i) If activated, the arboricultural works listed in a) and b) are undertaken and certified by an Arborist/Project Arborist as compliant to AS 4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.

26. Condition of Trees

a) during the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to, or by seeking arboricultural advice from an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture during the works. In this regard all protected trees shall not exhibit:

- i) a general decline in health and vigour,
- ii) damaged, crushed or dying roots due to poor pruning techniques,
- iii) more than 10% loss or dieback of roots, branches and foliage,
- iv) mechanical damage or bruising of bark and timber of roots, trunk and branches,
- v) yellowing of foliage or a thinning of the canopy untypical of its species,
- vi) an increase in the amount of deadwood not associated with normal growth,
- vii) an increase in kino or gum exudation,
- viii) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
- ix) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

b) any mitigating measures and recommendations required by the Arborist/Project Arborist are

to be implemented.

c) the owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of trees.

27. **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.

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

All works and demolition activities are to be undertaken in accordance with the approved Demolition Traffic Management Plan (DTMP). All controls in the DTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate TfNSW accreditation. Should the implementation or effectiveness of the DTMP be impacted by surrounding major development not encompassed in the approved DTMP, the DTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved DTMP is to be kept onsite at all times and made available to the accredited certifier or Council on request.

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

29. **Implementation of Construction Traffic Management Plan**

All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate TfNSW accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

Reason: To ensure compliance of the developer/builder in adhering to the Construction Traffic Management procedures agreed and are held liable to the conditions of consent.

30. **Ongoing Management**

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

Reason: To ensure public safety.

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. **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.

33. **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.

34. **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.

35. 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.

36. 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.

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.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

38. Landscape Completion

a) landscape works are to be implemented in accordance with the approved Landscape Plan(s) (drawings L-04 D, L-05 D, L-06 D, L-07 D by Site Design Studios dated 27/11/23), and inclusive of the following conditions:

i) planting shall be installed as indicated on the approved Landscape Plan(s) unless otherwise imposed by any conditions,

ii) all proposed trees and vegetation along the northern, eastern and western boundaries shall not include any species capable of attaining a mature height greater than RL31.41, and consideration shall be given to existing ground levels where individual species will be installed,

iii) substitute all *Rhaphiolepis* species with a suitable alternative (although a cultivar is proposed, Council deems this species an environmental threat),

iv) substitute *Cupaniopsis anacardioides* with *Angophora hispida*,

v) all native tree planting shall be a minimum pre-ordered planting size of 75 litres or as otherwise scheduled if greater in size; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth generally, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 2.5 metres from buildings or more, at least 1.0 metre from common boundaries; and located either within garden bed or within a prepared bed within lawn,

vi) mass planting shall be installed at minimum 1 metre intervals (or less) for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,
vii) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces,
viii) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone,
ix) where the property is certified Bush Fire Prone Land, any new planting may be managed in accordance with Planning for Bushfire Protection 2019.

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

Reason: Environmental amenity.

39. **Condition of Retained Vegetation**

a) prior to the issue of an Occupation Certificate, a report prepared by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Principal Certifier, assessing the health and impact on all existing trees required to be retained on the approved Plans or as listed in the Arboricultural Impact Assessment, including the following information:
i) compliance to any Arborist recommendations for tree protection generally and during excavation works,
ii) extent of damage sustained by vegetation as a result of the construction works,
iii) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree and vegetation protection.

40. **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.

41. **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.

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

The Applicant shall lodge the Legal Documents Authorisation Application with the original

completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), and Civil Engineers' certification.

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

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

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

43. **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.

44. **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 2008
- (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 Certifying Authority, 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 Certifying Authority prior to the issue of an Interim / Final Occupation Certificate.

Reason: To protect human life (DACPLF09)

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

45. **Landscape Maintenance**

a) if any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components.

b) trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

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

d) a maintenance activity schedule for on-going maintenance of planters on slab shall be incorporated to monitor and replenish soil levels as a result of soil shrinkage over time.

e) the approved landscape planted areas, whether containing lawn, gardens or planters shall in perpetuity remain as planting under the development consent, and shall not be replaced with any hard paved surfaces or structures.

Reason: To maintain local environmental amenity.

46. **Landscaping adjoining vehicular access**

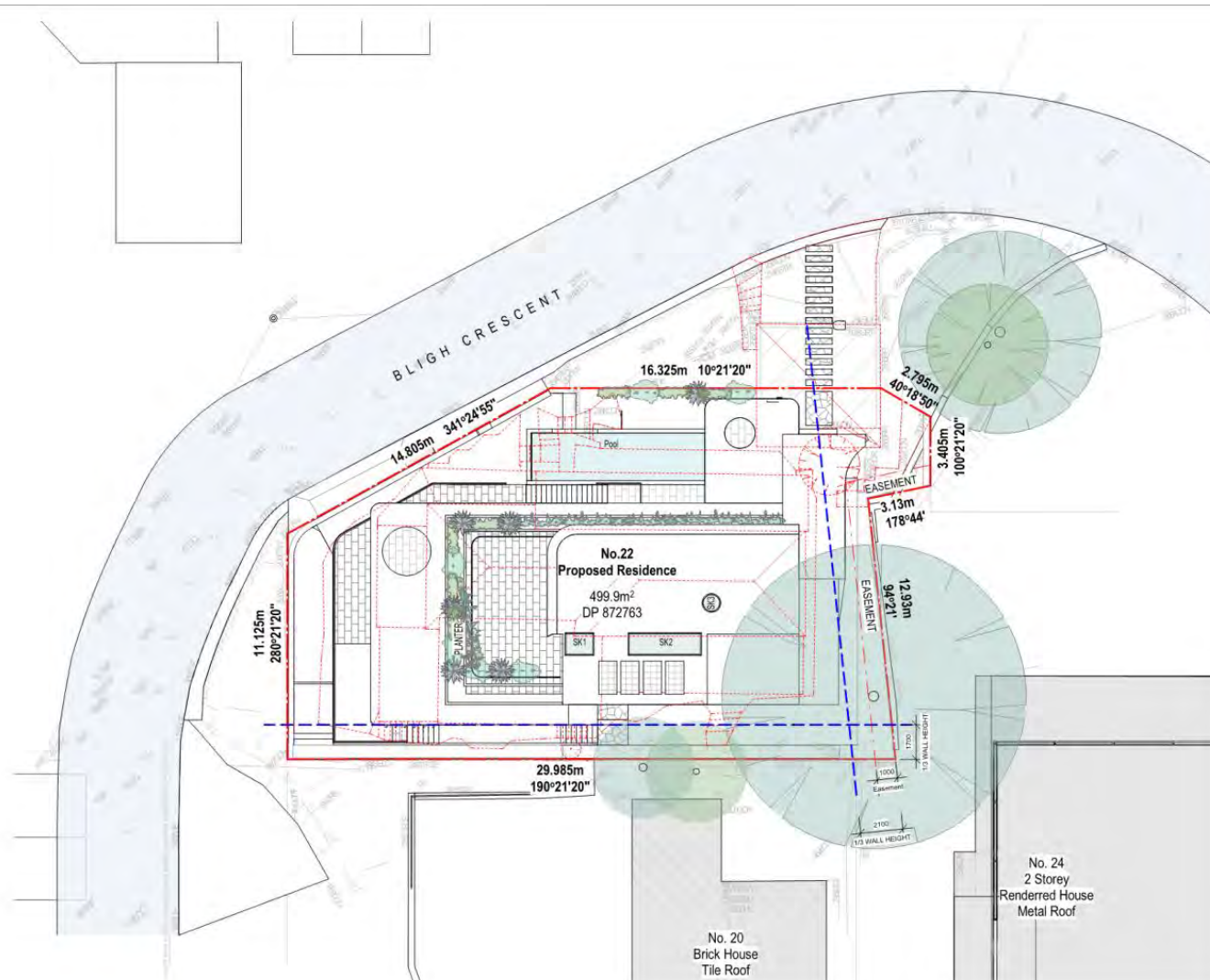
The applicant must ensure that the planting chosen for any land immediately adjacent to the driveway and adjacent to any driveway intersections must not exceed a height of 1,140mm

Reason: To maintain unobstructed sight distance for motorists.

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

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

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



1
A0110
Site Plan
1 : 200@A3

DEVELOPMENT APPLICATION

EMK ARCHITECTS 18 Durnley Place Watsons Bay NSW 2017 enquiries@emkarchitects.com www.emkarchitects.com certified architect and licensed site mg. 9368 905 16 429 212 716	<table><tr><th>issue</th><th>amendment</th><th>date</th><th>Notes</th></tr><tr><td>A</td><td>Development Application</td><td>24.05.2023</td><td rowspan="2">This drawing is copyright and is not to be replicated or used for any purpose without the written consent of EMK Architects.</td></tr><tr><td>B</td><td>Resubmission</td><td>24.05.2023</td></tr></table>	issue	amendment	date	Notes	A	Development Application	24.05.2023	This drawing is copyright and is not to be replicated or used for any purpose without the written consent of EMK Architects.	B	Resubmission	24.05.2023	Use figured dimensions only - do not scale from this drawing. All dimensions to structure - confirm all dimensions on site. This drawing is to be read in conjunction with all relevant consultant documentation, schedules and specifications.	<table><tr><td colspan="2">project</td><td colspan="2">drawing</td></tr><tr><td colspan="2">New Dwelling with Swimming Pool</td><td colspan="2">Site Plan</td></tr><tr><td colspan="2">project address</td><td>project no.</td><td rowspan="2">drawing no.</td></tr><tr><td colspan="2">22 Bligh Crescent, Seaford</td><td>2725</td></tr><tr><td>client</td><td>drawn</td><td>scale</td><td rowspan="2">A0009</td></tr><tr><td></td><td>EMK</td><td>1 : 200@A3</td></tr></table>	project		drawing		New Dwelling with Swimming Pool		Site Plan		project address		project no.	drawing no.	22 Bligh Crescent, Seaford		2725	client	drawn	scale	A0009		EMK	1 : 200@A3
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Town Planners

Updated clause 4.6 variation request – FSR
Proposed dwelling house and swimming pool
22 Bligh Crescent, Seaforth
22.11.23

1.0 Introduction

This updated clause 4.6 variation request has been prepared in support of the following amended architectural plans prepared by EMK Architects:

A0000	Cover Sheet	B	24.05.2023
A0002	Site Analysis Plan	A	24.05.2023
A0003	Window Schedule and BASIX	A	24.05.2023
A0006	Demolition Plan	A	24.05.2023
A0007	Existing Ground Floor Plan	B	24.05.2023
A0008	Existing Lower Ground Floor	B	24.05.2023
A0009	Site Plan	B	24.05.2023
A0101	Floor Plan - Basement	B	24.05.2023
A0102	Floor Plan - Lower Ground	B	24.05.2023
A0103	Floor Plan - Ground Floor	B	24.05.2023
A0104	First Floor	B	24.05.2023
A0106	Roof Plan	B	24.05.2023
A0109	Driveway Plan	B	24.05.2023
A0110	Ramp Section	B	24.05.2023
A0201	Elevations - Sheet 1	B	24.05.2023
A0202	Elevations - Sheet 2	B	24.05.2023
A0301	Sections Sheet 1	B	24.05.2023
A0302	Sections Sheet 2	B	24.05.2023
A0305	Site - Long Section	A	24.05.2023
A0306	Excavation & Fill Plan	A	24.05.2023
A0307	Waste Management Plan	A	24.05.2023
A0400	Road Asset Plan 01	B	24.05.2023
A0401	Road Asset Plan 02	B	24.05.2023
A0402	Road Asset - Section 1	B	24.05.2023
A0403	Road Asset - Section 2	B	24.05.2023
A0404	Road Asset - Section 3	B	24.05.2023
A0405	Road Asset - Section 4	B	24.05.2023
A0406	Road Asset - Section 5	B	24.05.2023
A0407	Road Asset - Elevation	B	24.05.2023
A0601	Calculation Plans - FSR	B	24.05.2023
A0602	Calculation Plans - Landscape	B	24.05.2023
A0603	Height Plane	A	24.05.2023
A0611	Shadow Diagrams	A	24.05.2023
A0615	Sun Analysis - VFS	A	24.05.2023
A0701	Schedule of Colours and Finishes	A	24.05.2023
A0702	Photomontage	A	24.05.2023

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

2.0 Manly Local Environmental Plan 2013 (“MLEP”)

2.1 Clause 4.4 – Floor space ratio

Pursuant to Clause 4.4 MLEP 2013 the maximum FSR for development on the site is 0.4:1 representing a gross floor area of 199.96 square metres. The stated objectives of this clause are:

- (a) *to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*
- (b) *to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
- (c) *to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
- (d) *to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
- (e) *to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

It has been determined that the proposal result in a total gross floor area on the site of 299.7 square metres. This represents a floor space ratio of 0.59:1 and therefore non-compliant with the FSR standard by 99.74 square metres or 49%.

I note that clause 4.1.3 of Manly Development Control Plan 2013 contains FSR exemption provisions applicable to land where the site area is less than the minimum Lot size required on the LEP Lot size map provided the relevant LEP objectives and the provisions of the DCP are satisfied.

The Lot size map identifies the subject site as being in sub zone “U” in which a minimum Lot area of 1150m² is required. The site having an area of only 499.9m² is well below the minimum Lot area provision and accordingly the clause 4.1.3 Manly DCP FSR variation provisions apply.

Clause 4.1.3.1 states that the extent of any exception to the LEP FSR development standard pursuant to clause 4.6 of the LEP is to be no greater than the achievable gross floor area for the lot indicated in Figure 30 of the DCP. We confirm that pursuant to Figure 30 the calculation of FSR is to be based on a site area of 750m² with an achievable gross floor area of 300m².

In this regard, the 299.7m² of gross floor area proposed, representing an FSR of 0.399:1 (based on 750m²), is below the maximum prescribed gross floor area of 300m² and as such complies with the DCP variation provision. We note that such provision contains the following note:

Note: FSR is a development standard contained in the LEP and LEP objectives at clause 4.4(1) apply. In particular, Objectives in this plan support the purposes of the LEP in relation to maintaining appropriate visual relationships between new development and the existing character and landscape of an area as follows:

- | | |
|--------------|---|
| Objective 1) | <i>To ensure the scale of development does not obscure important landscape features.</i> |
| Objective 2) | <i>To minimise disruption to views to adjacent and nearby development.</i> |
| Objective 3) | <i>To allow adequate sunlight to penetrate both the private open spaces within the development site and private open spaces and windows to the living spaces of adjacent residential development.</i> |

As the proposed GFA/ FSR complies with clause 4.1.3.1 MDCP numerical provision it is also “deemed to comply” with the associated objectives as outlined which, if complied with, demonstrate the maintenance of an *appropriate visual relationships between new development and the existing character and landscape of an area.*

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of MLEP provides:

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

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

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

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

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

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

Clause 4.6(2) of MLEP provides:

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

This clause applies to the clause 4.4 Floor Space Ratio Development Standard.

Clause 4.6(3) of MLEP provides:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

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

The proposed development does not comply with the floor space ratio provision at 4.4 of MLEP which specifies a maximum FSR however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

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

Clause 4.6(4) of MLEP provides:

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) *the consent authority is satisfied that:*
- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Director-General has been obtained.*

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

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

Under cl 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 5th May 2020, attached to the Planning Circular PS 20-002 issued on 5th May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of MLEP provides:

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

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 4.4 of MLEP from the operation of clause 4.6.

3.0 Relevant Case Law

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

- 17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
- 18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
- 19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*

20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51].*

The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.

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

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

1. Is clause 4.4 of MLEP a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.4 and the objectives for development for in the zone?

4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.4 of MLEP?

4.0 Request for variation

4.1 Is clause 4.4 of MLEP a development standard?

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

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

Clause 4.4 MLEP prescribes a floor space height provision which seeks to limit the bulk, scale and density of the development. Accordingly, clause 4.4 MLEP is a development standard.

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

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

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

Consistency with objectives of the floor space ratio standard

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

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

Response: This objective relates to streetscape character and in this regard the proposal presents a predominantly 2 storey stepped building height to Bligh Crescent with the stepped building form acknowledging (consistent with) the topographic landscape of the land which falls away towards its southern boundary.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191, I have formed the considered opinion that most observers would not find the bulk and scale of the proposed development, as viewed from Bligh Crescent, to be offensive, jarring or unsympathetic in a streetscape context. In this regard, I rely on the plan extract below.



Figure 1 – Plan extract of proposed development as viewed from Bligh Crescent

This objective is satisfied, notwithstanding the non-compliant FSR proposed, as the bulk and scale of development is consistent with the existing and desired streetscape character.

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

Response: Having regard to clause 4.1.3.1 Manly DCP FSR provisions, which inform the 299.7m² of gross floor area proposed, representing an FSR of 0.399:1 (based on 750m²), is below the maximum prescribed gross floor area of 300m² and as such complies with the DCP variation provision applicable to undersized allotments. We note that Objective 1 of the DCP provision, which relates to establishing building density and bulk, as reflected by FSR, in relation to site area (undersized allotments) is similar to this LEP objective namely:

- Objective 1) To ensure the scale of development does not obscure important landscape features.*

As previously indicated the proposed FSR complies with the DCP numerical FSR control applicable to undersized allotments and is therefore deemed to comply with this objective.

That said, neither the LEP or DCP identify and important landscape or townscape features either on or within proximity of the subject site. My own observations did not identify and landscape or townscape features that I would consider important in terms of their visual significance.

I am satisfied that the proposal, notwithstanding the FSR non-compliance, achieves this objective as the building density and bulk, in relation to a site area, satisfies Objective 1 of the clause 4.1.3.1 DCP provision applicable to undersized allotments, with the development not obscuring any important landscape and townscape features.

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

Response: This objective is the same as the primary purpose/ objective outlined at clause 4.1.3 of the DCP as confirmed in the note such provision namely:

Note: FSR is a development standard contained in the LEP and LEP objectives at clause 4.4(1) apply. In particular, Objectives in this plan support the purposes of the LEP in relation to maintaining appropriate visual relationships between new development and the existing character and landscape of an area as follows:

Objective 1) To ensure the scale of development does not obscure important landscape features.

Objective 2) To minimise disruption to views to adjacent and nearby development.

Objective 3) To allow adequate sunlight to penetrate both the private open spaces within the development site and private open spaces and windows to the living spaces of adjacent residential development.

As the proposed GFA/ FSR complies with clause 4.1.3.1 MDCP numerical provision it is also “deemed to comply” with the associated objectives as outlined which, if complied with, demonstrate the maintenance of an *appropriate visual relationships between new development and the existing character and landscape of an area.*

That said, it has previously been determined that the proposal achieves objective (a) of the clause 4.4 MLEP FSR standard namely to *ensure the bulk and scale of development is consistent with the existing and desired streetscape character.* Accordingly, I am satisfied that the development, notwithstanding the FSR non-compliance, maintains an appropriate visual relationship between new development and the existing built form character of the area.

In relation to landscape character, the application does not require the removal of any significant trees or vegetation with a building footprint maintained which is compliant with the total open space and landscaped area MDCP controls. The building will sit within a landscaped setting. The application is accompanied by a schedule of materials and finishes which will enable the development to blend into the vegetated escarpment which forms and backdrop to the site. An appropriate visual relationship between new development and the existing landscape of the area is maintained.

I am satisfied that the development, notwithstanding its FSR non-compliance, achieves the objective as it maintains an appropriate visual relationship between new development and the existing character and landscape of the area.

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

Response: In responding to this objective. I have adopted views, privacy, solar access and visual amenity as environmental factors which contribute to the use and enjoyment of adjoining public and private land.

Views

Having inspected the site and its surrounds to identify potential view lines over and across the site I am of the opinion that the only property potentially affected in relation to views is No. 24 Bligh Crescent, to the north of the site. This property enjoys views in a southerly direction over Each Tree Bay towards Middle Harbour and Sailors Bay sweeping around to the west towards Fig Tree Cove. The long section at Figure 2 over page clearly demonstrates that the height of the proposed dwelling relative to the floor levels of this adjoining property will ensure that existing views from principal living and adjacent open space areas will be maintained with any potential view loss appropriately described as negligible.

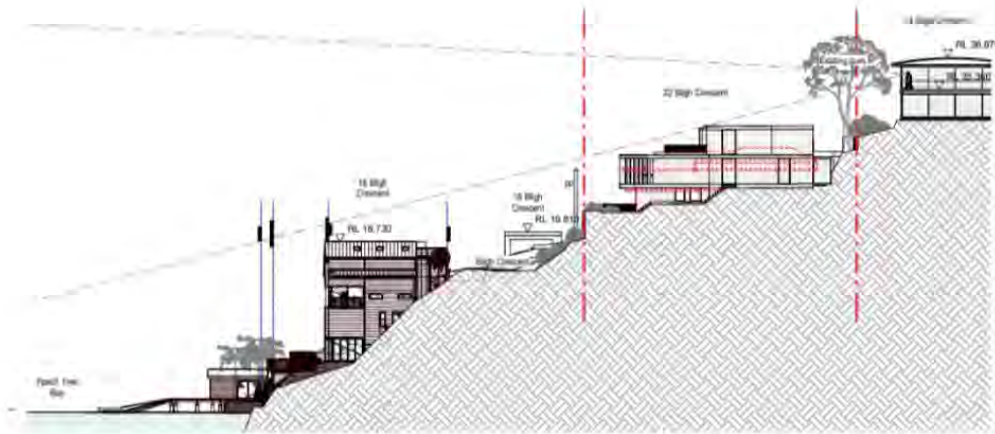


Figure 2 - Long section showing relative levels of the subject property and No. 24 Bligh Crescent and the view sharing outcome achieved.

Having reviewed the detail of the application we have formed the considered opinion that a view sharing scenario is maintained between adjoining properties in accordance with the principles established in *Tenacity Consulting Pty Ltd v Warringah Council* [2004] NSWLEC140 and *Davies v Penrith City Council* [2013] NSWLEC 1141.

Notwithstanding the non-compliant FSR, the proposal achieves the objective of minimising view impact as demonstrated by the view sharing outcome achieved.

Privacy

Having regard to clause 4.1.3.1 Manly DCP FSR provisions, which inform the 299.99m² of gross floor area proposed, representing an FSR of 0.399:1 (based on 750m²), is below the maximum prescribed gross floor area of 300m² and as such complies with the DCP variation provision applicable to undersized allotments. We note that the privacy objectives at clause 3.4.2 are also referenced in relation to these provisions namely:

See also objectives for privacy at paragraph 3.4.2 of this plan.

3.4.2 Privacy and Security

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;*
- *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

As previously indicated the proposed FSR complies with the DCP numerical FSR control applicable to undersized allotments and is therefore deemed to comply with the clause 3.4.2 privacy objectives to the extent that it can be demonstrated that the development *minimises loss of privacy to adjacent and nearby development*.

Notwithstanding, we note that all surrounding properties are orientated to the south to take advantage of views towards Middle Harbour. This spatial relationship prevents direct overlooking between the living areas of these properties with a degree of mutual overlooking of private open space areas anticipated where all properties are orientated to take advantage of views.

Given the spatial separation maintained between the balance of surrounding properties, and the primary orientation of living areas to the south towards available views, I am satisfied that the design, although non-compliant with the FSR standard, minimises adverse environmental impacts in terms of privacy and therefore achieves this objective.

Solar access

The accompanying shadow diagrams (Attachment 1) demonstrate that the building, although non-compliant with the FSR standard, will not give rise to any unacceptable shadowing impact to the existing north facing living room and open space areas of the adjoining residential properties with compliant levels of solar access maintained.

Visual amenity/ building bulk and scale

As indicated in response to objective (a), I have formed the considered opinion that the bulk and scale of the building is contextually appropriate with the floor space appropriately distributed across the site to achieve acceptable streetscape and residential amenity outcomes.

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

I have formed the considered opinion that the building, notwithstanding the FSR non-compliance, achieves the objective through skilful design that minimises adverse environmental impacts on the use and enjoyment of adjoining land and the public domain.

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

Response: This objective is not applicable.

Having regard to the above, the proposed building form which is non-compliant with the FSR standard will achieve the objectives of the standard to at least an equal degree as would be the case with a development that complied with the FSR standard. Given the developments consistency with the objectives of the FSR standard strict compliance has been found to be both unreasonable and unnecessary under the circumstances.

Consistency with zone objectives

The subject site is zoned R2 Low Density Residential pursuant to the provisions of MLEP. Dwelling houses are permissible in the zone with the consent of council. The stated objectives of the zone are as follows:

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

Response: The development seeks legitimate alterations and additions to an existing dwelling house on the site which will provide for the housing needs of the community within a low density residential environment. The proposal is consistent with this objective.

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

Response: N/A

The proposed works are permissible and consistent with the stated objectives of the zone.

The non-compliant development, as it relates to FSR, demonstrates consistency with objectives of the R2 Low Density Residential zone and the FSR standard objectives. Adopting the first option in *Wehbe* strict compliance with the FSR standard has been demonstrated to be is unreasonable and unnecessary.

4.2B Clause 4.6(4)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

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

The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.

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

Sufficient environmental planning grounds

I have formed the opinion that sufficient environmental planning grounds exist to justify the variation including the compatibility of the height, bulk and scale of the development, as reflected by floor space, with the built form characteristics established by adjoining development and development generally within the site's visual catchment.

Further, the variation provisions contained at clause 4.1.3.1 of Manly DCP reflect an acceptance that the FSR standard on undersized allotments does not provide for the orderly and economic use and development of the land and in my opinion represents an abandonment of the FSR standard on undersized allotments. The proposal satisfies such provisions.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposal promotes the orderly and economic use and development of land (1.3(c)).

- The development represents good design (1.3(g)).
- The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(h)).

It is noted that in *Initial Action*, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. *The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment).*

Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

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

4.3 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 4.4 and the objectives of the R2 Low Density Residential zone

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

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

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

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

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

Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

4.4 Secretary's concurrence

By Planning Circular dated 5th May 2020, the Secretary of the Department of Planning & Environment advised that consent authorities can assume the concurrence to clause 4.6 request except in the circumstances set out below:

- Lot size standards for rural dwellings;
- Variations exceeding 10%; and
- Variations to non-numerical development standards.

The circular also provides that concurrence can be assumed when an LPP is the consent authority where a variation exceeds 10% or is to a non-numerical standard, because of the greater scrutiny that the LPP process and determination s are subject to, compared with decisions made under delegation by Council staff.

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

5.0 Conclusion

Pursuant to clause 4.6(4)(a), the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

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

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

Boston Blyth Fleming Pty Limited



Greg Boston
B Urb & Reg Plan (UNE) MPIA
Director

Attachment 1

Shadow diagrams



ITEM 3.3

**DA2023/1344 - 20 ADELAIDE STREET BALGOWLAH
HEIGHTS - ALTERATIONS AND ADDITIONS TO A DWELLING
HOUSE**

REPORTING MANAGER **Rodney Piggott**

TRIM FILE REF **2023/798396**

ATTACHMENTS

- 1 [↓ Assessment Report](#)
- 2 [↓ Site Plan and Elevations](#)
- 3 [↓ Clause 4.6 - Height of Building](#)
- 4 [↓ Clause 4.6 - Floor Space Ratio](#)

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 and 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 and 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 DA2023/1344 for Alterations and additions to a dwelling house on land at Lot B DP 379402, 20 Adelaide Street BALGOWLAH HEIGHTS, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/1344
Responsible Officer:	Jordan Howard
Land to be developed (Address):	Lot B DP 379402, 20 Adelaide Street BALGOWLAH HEIGHTS 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:	Benjamin Matthew Clarke Stuart Tamsin Philippa Stuart
Applicant:	Pittwater Design & Draft
Application Lodged:	12/10/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	18/10/2023 to 01/11/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 15.3% 4.4 Floor space ratio: 21.9%
Recommendation:	Approval
Estimated Cost of Works:	\$ 116,600.00

EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) due to:

- A variation greater than 10% of Manly Local Environment Plan 2013 Clause 4.3 Height of Buildings, with a 15.3% variation proposed.
- A variation greater than 10% of Manly Local Environment Plan 2013 Clause 4.4 Floor Space Ratio, with a 21.9% variation proposed.

Council has received no submissions on the application following public exhibition.

The most critical assessment issues were the assessment of the proposed contraventions to the height of buildings and floor space ratio development standards. These issues are discussed in the section of this report on Clause 4.6 Exceptions to Development Standards of the Manly Local Environmental Plan 2013.

The 4.6 request for the non-compliance with the height of buildings standard arises from the construction of an extension to the first floor master bedroom over an existing lower ground garage that has been partially excavated. This results in a proposed height of 9.8m, a 15.3% variation to the stipulated 8.5m height standard. This proposed addition has an RL of 90.550m, whereas the existing dwelling has a maximum RL of 91.840m, meaning that the proposed addition is located lower than the highest point of the existing dwelling. The extent of the proposed works is relatively minor, does not give rise to any amenity impacts on surrounding properties or public spaces, and is considered to meet the relevant objectives of the zone and of the development standard. The additions will improve the amenity of the site, and in conjunction with internal works, adapt the existing dwelling for continued use. As such, this report recommends support for the variation request.

The 4.6 request for the non-compliance with the Floor Space Ratio (FSR) standard arises from a 15.3sqm increase in Gross Floor Area (GFA), resulting in a proposed GFA of 306.4sqm. This represents a proposed FSR of 0.488:1, a 21.9% variation to the stipulated FSR of 0.4:1 (251.28sqm). The extent of the proposed works is relatively minor, does not give rise to any amenity impacts on surrounding properties or public spaces, and is considered to meet the relevant objectives of the zone and of the development standard. Furthermore the proposed additions are not considered to create excessive bulk or scale, and will result in a dwelling commensurate to surrounding residential development. The additions will improve the amenity of the site, and in conjunction with internal works, adapt the existing dwelling for continued use. As such, this report recommends support for the variation request.

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

PROPOSED DEVELOPMENT IN DETAIL

This Development Applications seeks development consent for alterations and additions to a dwelling house. Specifically, the proposal comprises of the following:

- Ground floor addition to the front of the dwelling and internal alterations to create a small study and cloak room.
- First floor addition to extend the master bedroom at the front of the dwelling, internal alterations to create a WIR and alterations to the ensuite.

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.

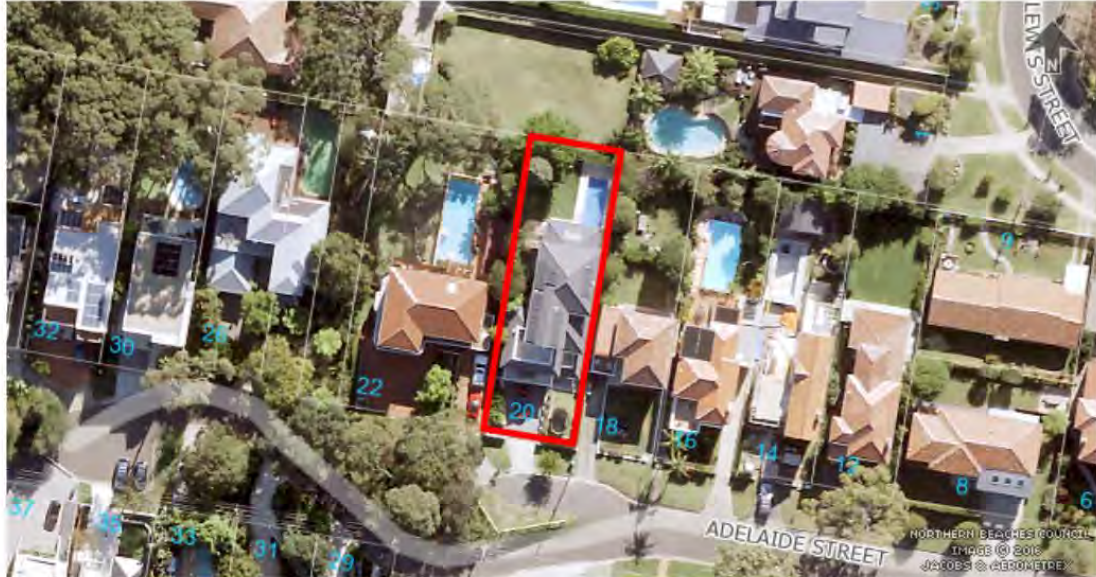
SUMMARY OF ASSESSMENT ISSUES

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 - 4.1.5 Open Space and Landscaping

SITE DESCRIPTION

Property Description:	Lot B DP 379402 , 20 Adelaide Street BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern side of Adelaide Street. The site is regular in shape with a frontage of 14.02m along Adelaide Street and a depth of 44.805m. The site has a surveyed area of 628.2sqm. The site is located within the R2 Low Density Residential zone and accommodates a dwelling house. The site is relatively flat, with a gradient of 1:20 sloping from the rear down to the front underneath the footprint of the existing dwelling house. The site contains lawn areas, garden beds and trees. There are no details of any threatened species on the subject site. Detailed Description of Adjoining/Surrounding Development

Map:



Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Mainly Development Control Plan applies to this proposal.

Section 4.15 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)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. 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. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 18/10/2023 to 01/11/2023 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

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. A508112, issued 13 September 2023).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

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
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Height of Buildings:	8.5m	9.8m	15.3%	No
Floor Space Ratio	FSR: 0.4:1 (251.28sqm)	FSR: 0.488:1 (306.4sqm)	21.9% (55.12sqm)	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 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

MLEP 2013 Clause 4.3 Height of Buildings

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.8m
Percentage variation to requirement:	15.3%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

circumstances.

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

Comment:

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

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act (cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- The development complies with the relevant objectives of the R2 Low Density Residential Zone of the MLEP 2013.
- The development complies with the relevant objectives of the Height of Buildings development standard of the MLEP 2013, notwithstanding the non-compliance.
- The maximum height of the new addition sits below the maximum height of the existing dwelling.
- The addition to the master bedroom is minor and the height breach in this area raises no amenity impact concerns with regard to views, overshadowing or privacy.
- The design seeks to complement the existing character of the dwelling.
- The height breach does not result in any unreasonable visual impacts and could not be seen as jarring or offensive given the context of the existing built form and scale of the dwelling.

It is considered that the arguments provided by the applicant are acceptable. The non-compliance is considered to arise from the site being partially excavated underneath the existing building for the garage, resulting in a proposed building height of 9.8m. The proposed RL of the extended master

bedroom is 90.550m, whereas the existing dwelling has a maximum RL of 91.840m, meaning that the proposed addition is located lower than the highest point of the existing dwelling. The proposed variation does not give rise to amenity impacts on surrounding properties. The proposal is considered to meet the relevant objectives of the zone and comply with the relevant objectives of the development standard, notwithstanding the 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 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 variation is created by existing excavation under the proposed addition to the first floor, resulting in the breach of the height of buildings development standard. The proposed additions sit below the existing RL of the dwelling roof. The proposal will result in a dwelling that is commensurate to surrounding residential development, prevailing building heights and desired future streetscape within the area.

b) to control the bulk and scale of buildings,

Comment:

It is not considered that the breach of the Height of Buildings standard by the proposal contributes to excessive bulk or scale, considering the existing dwelling has an RL higher than that proposed by the relatively small additions. The dwelling will remain commensurate to surrounding residential development in terms of bulk and scale.

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 provides an acceptable level of view sharing to public and private spaces and does not result in unreasonable view loss.

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

Comment:

The proposal provides an acceptable level of solar access to public and private spaces and does not result in unreasonable overshadowing. The additions are located on the southern elevation of the dwelling which faces Adelaide Street to the south. Therefore, the minimal additional shadowing caused by the proposal is limited to the street / road reserve and is considered reasonable.

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

Comment:

The subject site is not in a recreation or environmental protection zone. Nonetheless, the height of the proposal is not considered to impact on existing vegetation. No significant trees, vegetation or landscaped areas are proposed to be removed.

Zone objectives

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

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

Comment:

The proposal provides for the needs of current and future occupants within a low density residential environment.

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

Comment:

Non-residential land uses are not proposed on the subject site. However, the proposal includes

adequate indoor and outdoor areas to provide for the residential needs of current and future occupants.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the Height of Buildings development standard and the R2 Low Density Residential zone of the MLEP 2013.

It is considered on balance, that having regard to the particular circumstances, the proposed departure from the height of buildings development standard is acceptable and it is reasonable that flexibility to the standard be applied.

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).

MLEP 2013 Clause 4.4 Floor space ratio

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	FSR: 0.4:1 (251.28sqm)
Proposed:	FSR: 0.488:1 (306.4sqm)
Percentage variation to requirement:	21.9% (55.12sqm)

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

circumstances.

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

Comment:

Clause 4.4 - Floor space ratio development standard is not expressly excluded from the operation of this clause.

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- The development complies with the relevant objectives of the R2 Low Density Residential Zone of the MLEP 2013.
- The development complies with the relevant objectives of the Floor Space Ratio development standard of the MLEP 2013, notwithstanding the non-compliance.
- The proposed FSR is reasonable within the context of the locality whilst the proposed built form is considered to be reasonable when compared to existing development within the streetscape.
- The overall bulk and scale of the dwelling will not be significantly increased with only an additional 15.3sqm of GFA proposed. Furthermore, the existing dwelling is non-compliant with the FSR development standard, and these proposed additions are relatively minor
- The additional floor space is split between the ground and first floor. This results in minor additions to the ground and first floor which does not add unreasonable visual bulk.
- The development does not create any unreasonable amenity impacts with regard to overshadowing, privacy and view loss.

It is considered that the arguments provided by the applicant are acceptable. The proposed works are relatively minor in scope, proposing only an additional 15.3sqm of GFA in conjunction with internal alterations. These additions will improve the amenity of the site, and in conjunction with internal works, adapt the existing dwelling for continued use, rather than requiring excessive redesign, remodeling or replacement. Furthermore, the proposed variation does not give rise to amenity impact on surrounding properties. The proposal is considered to meet the relevant objectives of the zone and comply with the relevant objectives of the development standard, notwithstanding the 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 Floor Space Ratio 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 additions proposed only contribute to additional 15.3sqm of GFA. These additions will improve the amenity of the site, and in conjunction with internal works, adapt the existing dwelling for continued use, rather than requiring excessive redesign, remodeling or replacement. The proposal is considered to be commensurate to surrounding residential development and consistent with the existing and desired streetscape character.

b) to control building density and bulk in relation to a site area to ensure that development does

not obscure important landscape and townscape features,

Comment:

As above, the proposal is considered to be commensurate to surrounding residential development and consistent with the existing and desired streetscape character. The proposed development does not obscure important landscape or townscape features.

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

Comment:

The additions proposed only contribute to additional 15.3sqm of GFA, situated on the front elevation of the dwelling house. The proposal is considered visually connected to the existing dwelling. As discussed above, proposal is considered to be commensurate to surrounding residential development. No changes to landscaped area or landscaping are proposed. Therefore, the proposal maintains an appropriate visual relationship between new development and the existing character and landscape of the area.

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

Comment:

The proposal provides an acceptable level of solar access to public and private spaces and does not result in unreasonable overshadowing. The additions are located on the southern elevation of the dwelling which faces Adelaide Street to the south. Therefore, the minimal additional shadowing caused by the proposal is limited to the street / road reserve and is considered reasonable. The proposal is not considered to have an adverse impact on the enjoyment of adjoining land or the public domain.

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

Comment:

Not applicable. The proposal is not located in a business zone.

Zone objectives

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

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

Comment:

The proposal provides for the needs of current and future occupants within a low density residential environment.

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

Comment:

Non-residential land uses are not proposed on the subject site. However, the proposal includes

adequate indoor and outdoor areas to provide for the residential needs of current and future occupants.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the Floor Space Ratio development standard and the R2 Low Density Residential zone of the MLEP 2013.

It is considered on balance, that having regard to the particular circumstances, the proposed departure from the floor space ratio development standard is acceptable and it is reasonable that flexibility to the standard be applied.

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: 628.2sqm	Requirement	Proposed	% Variation	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwellings	1	-	Yes
	Dwelling Size: 129sqm (5 Bedrooms, 4 Bathrooms)	302.9sqm	-	Yes
4.1.2.1 Wall Height	E: 6.8m (based on gradient 1:20)	7m	2.9%	No
	W: 6.8m (based on gradient 1:20)	7.5m	10.3%	No
4.1.2.2 Number of Storeys	2	3	50%	No but existing and unchanged
4.1.2.3 Roof Height	Height: 2.5m	2.3m (lower roof addition) 1.4m (upper roof addition)	-	Yes
	Pitch: maximum 35 degrees	29 degrees	-	Yes

4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	12.7m, behind existing dwelling front building line and prevailing street building line	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	East: 1.4m (based on wall height of 4.3m to ground floor study) 2.3m (based on wall height of 7m to first floor master bedroom)	2.1m (to ground floor study) 6.3m (to first floor master bedroom)	- -	Yes Yes
	West: 2.5m (based on wall height of 7m to first floor master bedroom)	3.6m (to first floor master bedroom)	-	Yes
	No windows within 3m of a side boundary	No new windows within 3m of a side boundary	-	Yes
4.1.4.4 Rear Setbacks	8m	>8m, proposed works at front of existing dwelling	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area (376.9sqm)	54.5% (342.6sqm)	9.1% (34.3sqm)	No but existing and unchanged
	No more than 25% of total open space above ground level (85.7sqm)	0% (0sqm) of total open space provided above ground level	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of total open space (137sqm)	31.1% (106.5sqm)	22.3% (30.5sqm)	No but existing and unchanged
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	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
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

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

Description of non-compliance

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

- 6.8m (based on gradient 1:20) for the eastern elevation.
- 6.8m (based on gradient 1:20) for the western elevation.

On the eastern elevation, the proposed addition to the first floor present a non-compliant wall height of 7m, representing a variation of 2.9% to the control.

On the western elevation, the proposed addition to the first floor present a non-compliant wall height of 7.5m, representing a variation of 10.3% to the control.

Furthermore, this Clause stipulates a number of stories limit of two (2) storeys for this site. The dwelling has three (3) storeys, however, this is an existing feature of the existing dwelling and is unchanged by the proposal.

Merit consideration

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

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

4.1.3 Floor Space Ratio (FSR)

The proposed development has a FSR of 0.488:1 (306.4sqm), which represents a variation of 21.9% (55.12sqm) to the prescribed FSR of 0.4:1 (251.28sqm).

Clause 4.1.3 Floor Space Ratio (FSR) of the MDCP includes guidance for assessing variations where allotments are undersized. The subject site is 628.2sqm, and the minimum lot size as stipulated by Clause 4.1 Minimum subdivision lot size of the MLEP 2013 is 750sqm (Area R). Therefore, the subject site is undersized.

In this instance, the Clause stipulates that a variation may be accepted based on calculation of FSR using a 750sqm lot size. If the lot were to have a 750sqm lot size, the FSR of 0.4:1 would allow a Gross Floor Area (GFA) of 300sqm. The proposed GFA of 306.4sqm would still be non-compliant in this case, representing representing a 2.1% (6.4sqm) variation.

Whilst the proposal would still be non-compliant with FSR if calculated based on a lot size of 750sqm, the non-compliance would be reduced from 21.9% to 2.1%.

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

4.1.5 Open Space and Landscaping

The subject site is located within Residential Open Space Area OS4, which requires at least 60% (376.9sqm) of the site to be open space. In addition, at least 40% (137sqm) of the proposed total open space is to be landscaped area. Furthermore, no more than 25% (85.7sqm) of total open space can be provided above ground level.

As existing the subject site is numerically deficient of the required total open space and landscaped area. The subject site exhibits 54.5% (342.6sqm) total open space, representing a variation of 9.1% (34.3sqm) to the control. Landscaped area makes up 31.1% (106.5sqm) of total open space, representing a variation 22.3% (30.5sqm) to the control. Total open space above ground level is compliant at less than 25% of total open space.

However, these are existing features of the site. The proposed alterations and additions are within the existing building footprint. Whilst the works involve the enclosure or partial enclosure of some existing balconies and terraces, these areas were too small in dimensions to be included as total open space (this control requires areas of total open space to have horizontal dimensions of at least 3m in any direction). As such, the works do not alter the level of total open space or landscaped area provide on the subject site.

Therefore, as no further variation to the control is sought, a detailed merit assessment is not required in this instance.

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 \$ 583 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 116,600.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

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

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

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

Furthermore, Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

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

PLANNING CONCLUSION

This proposal, for alteration and additions to a dwelling house, has been referred to the Development Determination Panel (DDP) due to proposed variations of greater than 10% to both Manly Local Environment Plan 2013 Clause 4.3 Height of Buildings and Manly Local Environment Plan 2013 Clause 4.4 Floor Space Ratio.

Council has received no submissions on the application following public exhibition.

The most critical assessment issues were the assessment of the proposed contraventions to the height of buildings and floor space ratio development standards. These issues are discussed in the section of this report on Clause 4.6 Exceptions to Development Standards of the Manly Local

Environmental Plan 2013.

The 4.6 request for the non-compliance with the height of buildings standard arises from the construction of an extension to the first floor master bedroom over an existing lower ground garage that has been partially excavated. This results in a proposed height of 9.8m, a 15.3% variation to the stipulated 8.5m height standard. This proposed addition has an RL of 90.550m, whereas the existing dwelling has a maximum RL of 91.840m, meaning that the proposed addition is located lower than the highest point of the existing dwelling. The extent of the proposed works is relatively minor, does not give rise to any amenity impacts on surrounding properties or public spaces, and is considered to meet the relevant objectives of the zone and of the development standard. The additions will improve the amenity of the site, and in conjunction with internal works, adapt the existing dwelling for continued use. As such, this report recommends support for the variation request.

The 4.6 request for the non-compliance with the Floor Space Ratio (FSR) standard arises from a 15.3sqm increase in Gross Floor Area (GFA), resulting in a proposed GFA of 306.4sqm. This represents a proposed FSR of 0.488:1, a 21.9% variation to the stipulated FSR of 0.4:1 (251.28sqm). The extent of the proposed works is relatively minor, does not give rise to any amenity impacts on surrounding properties or public spaces, and is considered to meet the relevant objectives of the zone and of the development standard. Furthermore the proposed additions are not considered to create excessive bulk or scale, and will result in a dwelling commensurate to surrounding residential development. The additions will improve the amenity of the site, and in conjunction with internal works, adapt the existing dwelling for continued use. As such, this report recommends support for the variation request.

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

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

RECOMMENDATION

That Northern Beaches Council as the consent authority permits a contravention of the Clause 4.3 Height of Building development standard & the Clause 4.4 Floor Space Ratio development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written requests have adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standards 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 DA2023/1344 for Alterations and additions to a dwelling house on land at Lot B DP 379402, 20 Adelaide Street, BALGOWLAH HEIGHTS, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA-01	2	Site Plan + Analysis	Pittwater Design and Draft	9 September 2023
DA-02	2	Lower Ground Floor Plan	Pittwater Design and Draft	9 September 2023
DA-03	2	Ground Floor Plan	Pittwater Design and Draft	9 September 2023
DA-04	2	First Floor Plan	Pittwater Design and Draft	9 September 2023
DA-05	2	Roof Plan	Pittwater Design and Draft	9 September 2023
DA-06	2	South Elevation	Pittwater Design and Draft	9 September 2023
DA-07	2	East Elevation	Pittwater Design and Draft	9 September 2023
DA-08	2	West Elevation	Pittwater Design and Draft	9 September 2023
DA-09	2	Section	Pittwater Design and Draft	9 September 2023
DA-10	2	Section	Pittwater Design and Draft	9 September 2023
DA-11	2	Section	Pittwater Design and Draft	9 September 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate	A508112	Leigh Sym	13 September 2023
Geotechnical Assessment	AG 23714	Ascent Geotechnical Consulting	9 October 2023
Waste Management Plan	-	Pittwater Design and Draft	21 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. **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	02/11/2023 (on EDMS)

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

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

3. **Prescribed Conditions**

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

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

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

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

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

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

Reason: Legislative requirement.

4. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the following is required:
 - i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
 - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
 - iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
- (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 \$583.00 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 \$116,600.00.

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

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

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

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

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. 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.

9. Sydney Water "Tap In"

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

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

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

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

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

DURING BUILDING WORK

10. 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.

11. 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.

12. 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.

13. **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

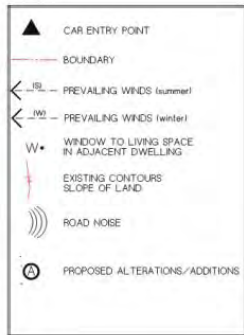
14. **House / Building Number**

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.

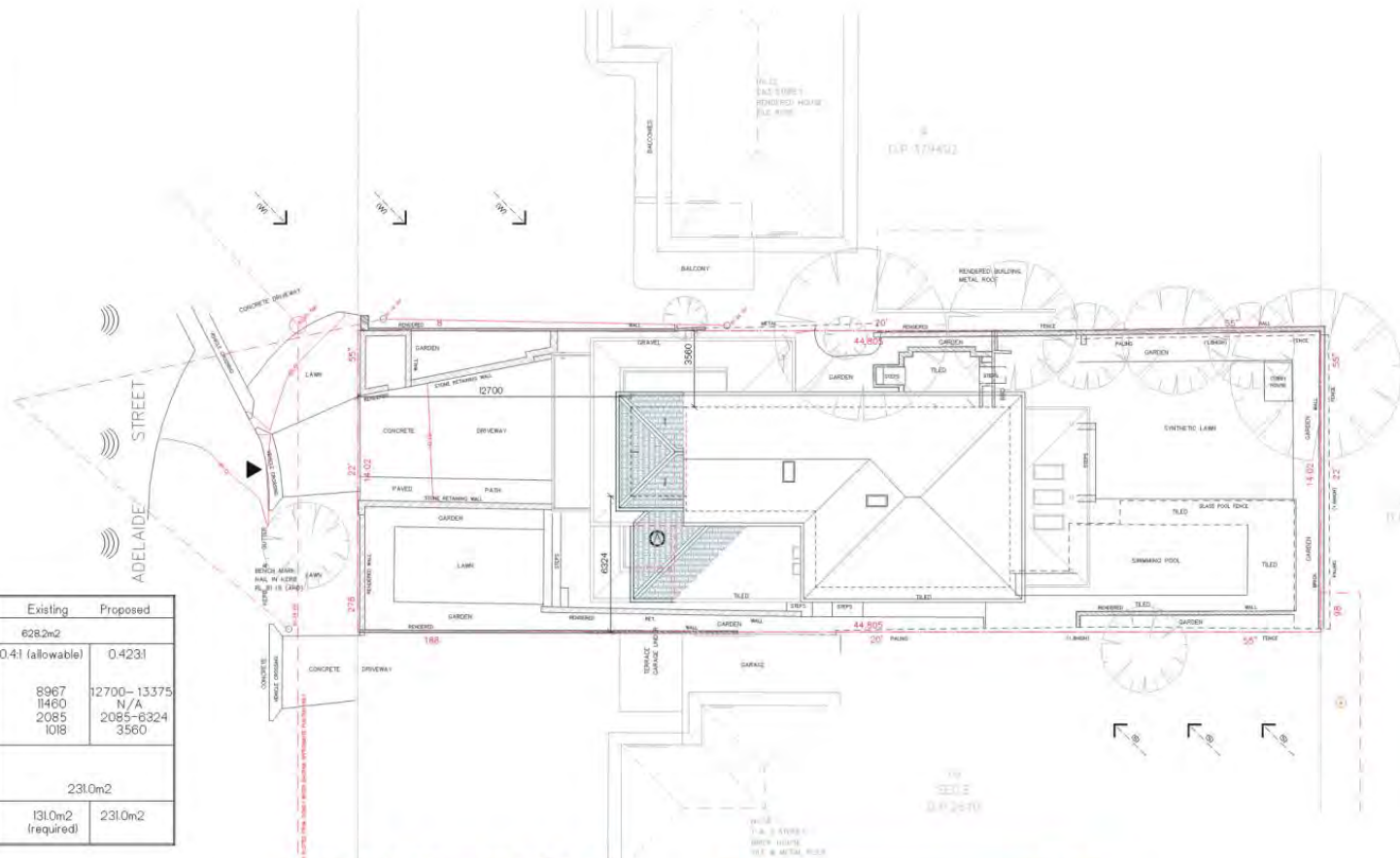
KEY



	Existing	Proposed
Site Area	6282m ²	
4.1.3.1a Floor Space Ratio	0.41 (allowable)	0.4231
4.1.4 Setbacks (mm)		
~South (front)	8967	12700 - 13375
~North (rear)	1460	N/A
~East (side)	2085	2085-8324
SITE CALCULATIONS	1018	3560
EXISTING LANDSCAPED AREA	2310m ²	
PROPOSED LANDSCAPED AREA	1310m ² (required)	2310m ²

FLOOR SPACE RATIO CALCULATIONS

	Existing	Proposed
Site Area	6282m ²	
Lower Floor	62.8m ²	62.8m ²
Ground Floor	133.4m ²	140.1m ²
First Floor	88.5m ²	97.3m ²
TOTAL	284.7m ²	300.2m ²
4.1.3 - FLOOR SPACE RATION (FSR)	0.41 (allowable) or 25128m ²	0.4781
4.1.3.1a - FLOOR SPACE RATION (FSR) (CALCULATION BASED ON 750 SQM LOT SIZE)	0.41 (allowable) or 300.0m ²	0.41



Aerial view of 20 Adelaide Street, Balgowlah Heights



Zoning map of 20 Adelaide Street, Balgowlah Heights





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Clause 4.6 variation request - Height of buildings (clause 4.3 MLEP 2013) **20 Adelaide Street, Balgowlah Heights**

1.0 Introduction

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

2.0 Manly Local Environmental Plan 2013 (“MLEP”)

2.1 Clause 4.3 - Height of buildings

Pursuant to Clause 4.3 of Manly Local Environmental Plan 2013 (MLEP) the height of a building on the subject land is not to exceed 8.5 metres in height. The objectives of this control are as follows:

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

Building height is defined as follows:

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

Ground level existing is defined as follows:

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

It has been determined that the proposal has a building height of 9.8m measured from the excavated garage level to the top of the roof of the new addition. The existing dwellings maximum height however is greater than the height of the new addition. The top of the roof of the new additions is RL 90.55 while the existing dwelling has a maximum ridge height of RL 91.84, as demonstrated with the elevation below.



Image 1: East Elevation showing the new works to the front of the dwelling

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of MLEP provides:

(1) The objectives of this clause are:

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“Initial Action”) provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH*

Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant's written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

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

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

Clause 4.6(2) of MLEP provides:

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

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

Clause 4.6(3) of MLEP provides:

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

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

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

The proposed development does not comply with the height of buildings provision at 4.3 of MLEP which specifies a maximum building height however strict compliance is

considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

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

Clause 4.6(4) of MLEP provides:

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

(a) the consent authority is satisfied that:

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

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

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

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

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

Under cl 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of MLEP provides:

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

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

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

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

3.0 Relevant Case Law

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

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

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

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

20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development*

consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].

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

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

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

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

4.0 Request for variation

4.1 Is clause 4.3 of MLEP a development standard?

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

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

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

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

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

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

Consistency with objectives of the height of buildings standard

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

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

Response: The maximum height to the new addition will sit below the maximum height of the existing dwelling. The height to the new addition could not be considered inconsistent within its context nor with prevailing building heights within the streetscape.

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

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

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

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

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

The proposal achieves this objective.

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

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

Response: The minor addition to the front of the dwelling does not raise any concerns with impacts to existing views. Dwellings are orientated towards the south and will not have those primacy aspect views impacts.

The proposal achieves this objective.

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

Response: No views will be impacted by the proposed works and is consistent with the view sharing planning principle.

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

Response: The building form and height has been appropriately distributed across the site to minimise disruption of views between public spaces.

The proposal achieves this objective.

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

Response: The shadow diagrams provided within the architectural set demonstrate that the building height breaching portion of the development will not give rise to any unacceptable shadowing impact to the property to the south.

The proposal achieves this objective.

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

Response: This objective is not applicable.

Having regard to the above, the non-compliant component of the building will achieve the objectives of the standard to at least an equal degree as would be the case with a development that complied with the building height standard. Given the developments consistency with the objectives of the height of buildings standard strict compliance has been found to be both unreasonable and unnecessary under the circumstances.

Consistency with zone objectives

The subject site is zoned R2 Low Density Residential pursuant to the provisions of MLEP. Dwelling houses are permissible in the zone with the consent of council. The stated objectives of the zone are as follows:

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

Response: The development relates to alterations and additions to an existing dwelling.

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

Response: N/A

The proposed works are permissible and consistent with the stated objectives of the zone.

The non-compliant component of the development, as it relates to building height, demonstrates consistency with objectives of the R2 Low Density Residential zone and the height of building standard objectives. Adopting the first option in *Wehbe* strict compliance with the height of buildings standard has been demonstrated to be unreasonable and unnecessary.

4.2B Clause 4.6(4)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

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

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

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

Sufficient environmental planning grounds exist to justify the height of buildings variation which include:

- The height to the new addition sits below existing maximum height of the existing dwelling. This is considered a technical non-compliance given the context of the existing built form.
- The addition to the master bedroom is minor and the height breach in this area raises no amenity impact concerns with regard to views, overshadowing or privacy. The design seeks to complement the existing character of the dwelling. The height breach does not result in any unreasonable visual impacts and could not be seen as jarring or offensive given the context of the existing built form and scale of the dwelling.

In this regard, I consider the proposal to be of a skilful design which responds appropriately and effectively to the above constraints by appropriately distributing floor

space, building mass and building height across the site in a manner which provides for appropriate streetscape and residential amenity outcomes including a view sharing scenario.

Such outcome is achieved whilst realising the reasonable development potential of the land.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposal promotes the orderly and economic use and development of land (1.3(c)).
- The development represents good design (1.3(g)).
- The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(h)).

It is noted that in *Initial Action*, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. *The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.*

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

4.3 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 4.3A and the objectives of the R2 Low Density Residential zone

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

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

"The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent

with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest.

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

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

Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

4.4 Secretary's concurrence

By Planning Circular dated 21st February 2018, the Secretary of the Department of Planning & Environment advised that consent authorities can assume the concurrence to clause 4.6 request except in the circumstances set out below:

- Lot size standards for rural dwellings;
- Variations exceeding 10%; and
- Variations to non-numerical development standards.

The circular also provides that concurrence can be assumed when an LPP is the consent authority where a variation exceeds 10% or is to a non-numerical standard, because of the greater scrutiny that the LPP process and determination s are subject to, compared with decisions made under delegation by Council staff.

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

5.0 Conclusion

Pursuant to clause 4.6(4)(a), the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

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

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



Clause 4.6 for Height

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

Yours Sincerely

William Fleming
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**RE: CLAUSE 4.6 REQUEST TO VARY THE FLOOR SPACE RATIO
20 ADELAIDE STREET, BALGOWLAH HEIGHTS**

1.0 Introduction

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

2.0 Manly Local Environmental Plan 2013 (“MLEP”)

2.1 Clause 4.4 – Floor Space Ratio

Pursuant to Clause 4.4 of Manly Local Environmental Plan 2013 (MLEP) the floor space ratio control applicable to the site is 0.4:1. The objectives of this control are as follows:

- (a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*
- (b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
- (c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
- (d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
- (e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

It has been determined that the proposed gross floor area (GFA) is calculated at 300m² representing an FSR of 0.478:1. The maximum GFA permissible is measured at 251.28m². This represents a non-compliance of 48.72m² or 19.4%.

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of MLEP provides:

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

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

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

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

Clause 4.6(2) of MLEP provides:

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

This clause applies to the clause 4.4 FSR Development Standard.

Clause 4.6(3) of MLEP provides:

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

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

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

The proposed development does not comply with the FSR provision at 4.4 of MLEP which specifies a maximum FSR however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

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

Clause 4.6(4) of MLEP provides:

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

(a) *the consent authority is satisfied that:*

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

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

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

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

applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]).

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

Under cl 64 of the *Environmental Planning and Assessment Regulation 2021*, the Secretary has given written notice dated 5 May 2020, attached to the Planning Circular PS 20-002, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of MLEP provides:

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

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

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its

assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.4 of MLEP from the operation of clause 4.6.

3.0 Relevant Case Law

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

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

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

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

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

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

to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.

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

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

1. Is clause 4.4 of MLEP a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.4 and the objectives for development for in the zone?
4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.4 of MLEP?

4.0 Request for variation

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

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

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

Consistency with objectives of the Floor Space Ratio standard

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

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

Response: The works have been designed to be consistent with the existing character of the dwelling and a considered minor insofar that it significantly alters the bulk and scale of the dwelling.

We note that the existing dwelling has a non-compliant GFA measured at 284.7m² and the alterations and additions proposed will add an additional 15.3m². This is minor additional floor space and does not contribute to any unreasonable bulk and scale concerns nor significantly changes the context of the dwelling within the streetscape.

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

This objective is achieved as the bulk and scale of development is entirely consistent with the existing and desired streetscape character.

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

Response: The proposal does not result in any obstruction of important landscape or townscape features. All significant trees within the vicinity will be preserved and protected.

The proposal meets this objective.

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

Response: The development maintains an appropriate visual relationship with the character of development in the area and with the character of the existing dwelling. No changes to the existing landscaping is required with the works confined with the footprint of the existing dwelling. The minor additions to the front at the ground and first floor level will not significantly alter the visual relationship of the existing character of the area.

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

Response: The works would not result in any impact on the use or enjoyment of adjoining land and the public domain. The proposal maintains appropriate levels of amenity with regard to view loss, overshadowing and privacy despite the 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.*

Response: N/A

Consistency with zone objectives

The subject site is zoned R2 Low Residential pursuant to MLEP 2013 with dwelling houses permissible in the zone with consent. The stated objectives of the zone are as follows:

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

Response: The development relates to alterations and additions to an existing dwelling.

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

Response: N/A

The proposed works are permissible and consistent with the stated objectives of the zone.

The non-compliant component of the development, as it relates to FSR, demonstrates consistency with objectives of the R2 Low Density Residential zone and the FSR standard objectives. Adopting the first option in *Wehbe* strict compliance with the FSR standard has been demonstrated to be unreasonable and unnecessary.

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

In Initial Action the Court found at [23]-[24] that:

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

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

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

Sufficient environmental planning grounds exist to justify the FSR variation. Specifically, the environmental planning grounds consist of the following:

- The proposed FSR is reasonable within its context of the locality whilst the proposed built form is considered to be reasonable when compared to existing development within the streetscape. The subject site is consistent with the undersized lot provisions within the Manly DCP (cl: 4.4.3.1) which states that Council may consider exceptions to the maximum FSR under LEP clause 4.6 when both the relevant LEP objectives and the provisions of this DCP are satisfied. In this regard, we note that the minimum lot size applicable is 750m² resulting in a maximum GFA of 300m². The proposed GFA is compliant with the 300m² GFA control and this report has demonstrated consistency with the FSR and zone objectives within the LEP.
- The overall bulk and scale of the dwelling will not be significantly increased with only an additional 15.3m² of GFA proposed. The existing dwelling is non-compliant with the FSR development standard. The additional floor space is split between the ground and first floor. This results in minor additions to the ground and first floor which does not add unreasonable visual bulk.
- The development does not raise any unreasonable amenity impacts with regard to overshadowing, privacy and view loss. As outlined in the statement of environmental effects, views will be maintained from the immediately adjoining properties with the southern primary aspect views being unaffected.
- We note that Council has applied the FSR development standard flexibility with undersized lots and have approved variations provided that the undersized lot provisions within the DCP can be met.

I have formed the considered opinion that sufficient environmental planning grounds exist to justify the variation including the compatibility of the height, bulk and scale of the development, as reflected by floor space, with the built form characteristics established by adjoining development and development generally within the site's visual catchment, and the fact that the existing GFA/FSR is reduced as a consequence of the works proposed.

The developments compliance with the objectives of the FSR standard and the general paucity of adverse environmental impact also giving weight to the acceptability of the variation sought.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposal promotes the orderly and economic use and development of land (1.3(c)).
- The development represents good design (1.3(g)).
- The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(h)).

It is noted that in *Initial Action*, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. *The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.*

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

4.3 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 4.4 and the objectives of the R2 Low Density Residential zone

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

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

“The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development’s consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).”

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

Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

4.4 Secretary’s concurrence

By Planning Circular dated 21st February 2018, the Secretary of the Department of Planning & Environment advised that consent authorities can assume the concurrence to clause 4.6 request except in the circumstances set out below:

- Lot size standards for rural dwellings;
- Variations exceeding 10%; and
- Variations to non-numerical development standards.

The circular also provides that concurrence can be assumed when an LPP is the consent authority where a variation exceeds 10% or is to a non-numerical standard, because of the greater scrutiny that the LPP process and determination s are subject to, compared with decisions made under delegation by Council staff.

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

5.0 Conclusion

Having regard to the clause 4.6 variation provisions we have formed the considered opinion:

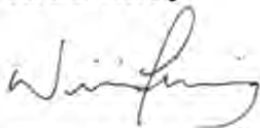
- (a) that the contextually responsive development is consistent with the zone objectives, and
- (b) that the contextually responsive development is consistent with the objectives of the FSR standard, and
- (c) that there are sufficient environmental planning grounds to justify contravening the development standard, and
- (d) that having regard to (a), (b) and (c) above that compliance with the FSR development standard is unreasonable or unnecessary in the circumstances of the case, and
- (e) that given the developments ability to comply with the zone and FSR standard objectives that approval would not be antipathetic to the public interest, and
- (f) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning; and
- (g) Concurrence of the Secretary can be assumed in this case.

Pursuant to clause 4.6(4)(a), the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

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

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

Yours Sincerely



William Fleming

33F TOWN PLANNERS

Clause 4.6 FSR

BS, MPLAN
Boston Blyth Fleming Pty Ltd
Director

ITEM 3.4 **DA2023/0302 - 1 OGILVY ROAD CLONTARF - ALTERATIONS
AND ADDITIONS TO A DWELLING HOUSE INCLUDING A
SWIMMING POOL**

REPORTING MANAGER **Rodney Piggott**

TRIM FILE REF **2023/802916**

ATTACHMENTS **1** [↓](#) **Assessment Report**
 2 [↓](#) **Site Plan and Elevations**
 3 [↓](#) **Clause 4.6 - Height of Building**
 4 [↓](#) **Clause 4.6 - Floor Space Ratio**

PURPOSE

1. To refer the attached application for determination as required under adopted delegations of the Charter.
2. To refer the attached application for determination due to directions provided by the Department of Planning & Environment in relation to applications with a clause 4.6 variation to the building height standard & 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 and 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 DA2023/0302 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 11 DP 2610, 1 Ogilvy Road CLONTARF, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0302
Responsible Officer:	Alex Keller
Land to be developed (Address):	Lot 11 DP 2610, 1 Ogilvy Road CLONTARF NSW 2093
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool
Zoning:	Manly LEP2013 - Land zoned C3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	John Trevor Holbrook Rachel Louise Holbrook
Applicant:	Ashley Barkle
Application Lodged:	24/03/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	30/03/2023 to 13/04/2023
Advertised:	Not Advertised
Submissions Received:	6
Clause 4.6 Variation:	4.3 Height of buildings: 5% 4.4 Floor space ratio: 46%
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,573,114.38

EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a dwelling house including, new swimming pool, landscaping and ancillary site works.

The application is referred to the Development Determination Panel (DDP) due to more than 5 public objections being received and the Building Height and FSR non-compliances that exceed a 10% variation.

The 'clause 4.6' request for the non-compliance with FSR arises from the existing multi-storey floor plate and the proposed alterations seeking to expand living space, bedrooms and rationalise the internal connectivity between floors as well as for minor excavation. The proposed FSR is 0.58:1 or 46% variation from the 0.4:1 development standard. The variation is distributed between the floors by extending the building southwards but does not create unreasonable impacts to the surrounding amenity. Applying Clause 4.1.3.1 for undersized lots as per Manly DCP the proposal would have a compliant FSR of 0.37:1.

Additionally, a 'Clause 4.6' request addressing the non-compliance with building height standard arises from the existing building height, steep land and existing excavation space below ground. The new (replacement) roof maintains a similar overall building height, however the enlargement and reshaping of the upper storey is 8.97m high, being a variation of 0.47m or 5% variation to the 8.5m height of buildings development standard.

Concerns raised in the submitted objections predominantly relate to building bulk, privacy, overshadowing and view impacts which have been addressed. Amended plans were received to assist in addressing landscape assessment concerns regarding tree protection and landscaping works. The amended plans were also required to clarify building height (including reducing some non-compliant elements), refining selected minor elements of the building additions, and reducing the extent of FSR non-compliance.

Critical assessment issues included consideration of the FSR variation and height variation as well as setbacks, building bulk, view impact and landscape amenity.

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

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for alterations and additions to the existing dwelling house and the construction of a swimming pool.

Specifically, the works include:

- Part demolition works and site preparation.
- Alterations and additions to the existing Lower Level to provide a TV room, guest bedroom, bathroom and storage.
- Alterations and additions to the existing Middle Level to improve garage facility, new family room, two bedrooms with ensuites, bathroom, storage and southern balcony.
- Alterations and additions to the existing Entry Level to provide a formal entrance foyer, kitchen, powder room, open plan living/dining area, southern balcony and northern courtyard.
- Alterations and additions to the existing Upper Level to provide an enlarged master bedroom with ensuite and terrace,
- The construction of a new swimming pool at the Lower Level.
- Fencing, landscaping, drainage, selected tree removal / trimming and ancillary site works.

(Amended plans were provided on 12.10.2023 to address assessment concerns raised in Council's RFI letter, generally reducing bulk / scale for lesser amenity impacts. Re-notification is not required as per CPP - See notification table in this report.)

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 - 3.3.1 Landscaping Design
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.7 First Floor and Roof Additions
 Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features
 Manly Development Control Plan - 5.4.1 Foreshore Scenic Protection Area

SITE DESCRIPTION

Property Description:	Lot 11 DP 2610 , 1 Ogilvy Road CLONTARF NSW 2093
Detailed Site Description:	The site is located on the southern, lower side of Ogilvy Road, at its intersection with an unmade public road (House Street). The site is rectangular in shape, with a 10.695 metres (m) wide frontage to Ogilvy Road to the north, a 44.195m wide frontage to the unmade road to the east, and a total area of 472.6 square metres (sqm). A two-three storey dwelling is situated on the site, with an attached double garage below street level. Vehicular access to the site is gained via a driveway across the unmade public road to the east that connects to Ogilvy Road. The site is bisected by a watercourse, that runs across the site (east-west) approximately 10m from the southern boundary.

The site falls from the street towards the watercourse, the rises again towards the southern boundary.

The site is surrounded by low density residential development of varying age, architectural style and character. The site does not contain any items of heritage significance and is not located in the vicinity of any. Existing canopy trees are present on the site and in the adjacent road reserves. The site is bushfire prone and surrounding properties along Ogilvy Road have views toward Middle Harbour.

Map:



SITE HISTORY

Building Application No.82/69 for a brick and tile dwelling was approved by Council in 1969.

Building Application No.395/72 for alterations to dwelling was approved by Council in 1972.

Building Application No.50/81 to enclose lower floor rumpus was approved by Council in 1981.

Building Application No.449/87 to create a loft upper storey was approved by Council on 29 Oct 1987.

The proposal will retain the main structural elements of the house and landscape areas. Standard conditions are recommended for safe handling of demolition material (e.g if any asbestos / lead paint, etc is uncovered) and the like.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider “Prescribed conditions” of development consent. These matters have been addressed via a condition of consent. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to height, views, privacy and FSR (including amendments to the plans) The amended plans do not create any greater adverse amenity impacts and overall reduced some selected non-compliant elements as well reducing oversized balcony space. Therefore, the changes do not require re-notification as per the <i>Community Participation Plan</i>. Renotification has not been made but the plans remained viewable online via Councils DA portal during the assessment period. All submissions have been considered in full and in context with the amendments. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly

Section 4.15 Matters for Consideration	Comments
impacts on the natural and built environment and social and economic impacts in the locality	Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development, subject to conditions.
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. All submissions have been read and considered either specifically in the submissions section of this report or elsewhere in the relevant DCP / LEP related consideration / referrals section. Submissions issues are summarised and may be addressed collectively where issues overlap. Multiple submissions related via the same address are managed as a single submission.
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, subject to conditions.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The proposal, being in BAL-FZ, was submitted with a Bushfire Assessment by a qualified bushfire expert and referral was made to the NSW Rural Fire Service (RFS). The RFS provided a detailed referral response dated 19.4.2023 to address asset protection, landscaping, construction, water and utility services, including general fire safety advice. RFS requirements are included with the recommended conditions.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 30/03/2023 to 13/04/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 6 submission/s from:

Name:	Address:
Mr Sean Ian Innes	18 Barrabooka Street CLONTARF NSW 2093
Donald Rabone	27 Barrabooka Street CLONTARF NSW 2093
Mr Trent Michael Davidson	33 Quinton Road MANLY NSW 2095

Name:	Address:
Mr David Gerrard Oswell	3 Ogilvy Road CLONTARF NSW 2093
Ms Maria Grace Sykes	2 Lone Pine Place NORTH BALGOWLAH NSW 2093
Mr David John Bridgford	29 Barrabooka Street CLONTARF NSW 2093

(Multiple submissions by owners or those prepared by consultants on behalf of a property owner are dealt with (collated) as a single address (collective) submission)

The following issues were raised in the submissions (consideration has been made as per the WDCP with regard to all submissions (as originally made and any subsequent):

1. Building bulk and streetscape appearance
2. Overshadowing / Solar Access
3. Excavation / soil stability / dilapidation risks
4. Overlooking / Privacy
5. Views
6. Height and FSR non-compliance
7. Wall setbacks and window setbacks.
8. Flora and fauna impacts
9. Public interest

- The above issues are addressed as follows:

1. Concern that the proposed bulk and scale does not fit with the desired streetscape and there is excessive bulk by virtue of height, FSR and overall scale of the alterations and additions.

Comment:

This issue is addressed under the clause 3.1.1 Streetscape (Residential areas), clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height) and clause 4.1.3 Floor Space Ratio (FSR) within this report. In summary, the proposal has been amended in response to these issues **raised** and detailed consideration has been pursuant to MDCP, including the pattern of surrounding development. This issue does not warrant refusal of the application.

2. Concern that the proposal will create overshadowing / solar access to adjacent land, including impact adjacent loss of light to windows (including study room / home office)

Comment:

This issue has been considered pursuant to clause 3.4.1 Sunlight Access and Overshadowing and the shadow diagrams (A.09 Revision B) prepared by Ashley Barkle (Architect) to demonstrate overshadowing. The close alignment between No.3 Ogilvy Road and the site as well as south facing slope with limitations on the site by narrowness, existing building / wall elements and gully line on the southern side of the dwelling limits opportunity to create a long elongated building footprint. The pattern of development generally shows preference of dwellings to use an outlook toward the SSW (harbour). This site has its principal outlook to the south and toward the reserve. Some reduced natural light will be lost to No.3 Ogilvy road due to the study windows in the narrow and lower area of the side separation between the two properties. Minimal planting between the dwellings is proposed to allow

natural light and some suitable planting in the shaded setback area. This issue does not warrant refusal of the application.

3. Concern that the proposal will create dilapidation risk to adjacent land and by excavation and construction / ancillary works, including encroachment or use of the adjacent reserve (driveway elements and the like).

Comment:

The minor excavation is proposed for the pool and basement excavation including ancillary works. The applicant has provided a detailed geotechnical investigation report and the recommendations within the report are to be followed during site works, addressed by conditions. Routine construction and excavation management during works are managed by the construction certificate process. Matters relating to sewer line positions are dealt with directly by Sydney Water administrative systems where that requires excavation / encasing sewer lines. Existing encroachment of the adjacent reserve with driveway elements are consistent with past Council approvals and are appropriately managed by Councils "Minor encroachments policy" and conditions / bonds to protect Council land.

- *4. Concern regarding overlooking and privacy impacts, including 'privatisation' of the adjacent reserve outlook, and POS nearby in Babooka Street.*

Comment

This issue has been considered pursuant to clause 3.4.2 *Privacy and Security* of the MDCP and amendments were made to the architectural plans to reduce selected elements and consider privacy and other design elements with regard to adjacent dwellings, noise, visual privacy and separation distances. Overall the adjacent reserve provides a wide bushland buffer to surrounding land to the west however the natural gully line creates some points of line of site and the natural surroundings afford low background noise to other urban locations that may be nearer traffic sources or local centres. Overall the proposal is multiple living spaces and options for indoor and outdoor relaxation / living within a low density urban environment. Conditions are recommend for custom privacy screens to the large west facing planar windows at a low height to moderate direct line of sight to the west only.

- *5. Concern regarding view impacts.*

Comment:

This issue has been addressed in detail under the heading 3.4.3 *Maintenance of Views* pursuant to Manly DCP 2013. Overall the height, bulk and setbacks of the building, as amended, does not create unreasonable view loss impacts. This issue does not warrant refusal of the application.

- *6. Concern the proposal has excessive height and floor space ratio non-compliance.*

Comment:

This issue has been addressed in detail under *Clause 4.6* pursuant to Manly LEP 2013. Overall the height, bulk and FSR of the building, as amended, does not create unreasonable amenity impacts and is consistent with the pattern of surrounding development in Ogilvy Road. This issue does not warrant refusal of the application

- *7. Concern regarding side wall setbacks and window setback positions.*

Comment:

This issue has been addressed in detail under the heading 4.1.4 *Setbacks (front, side and rear)*

and Building Separation pursuant to Manly DCP 2013. Overall the setbacks to No.3 Ogilvy Road remain consistent with the established wall line separation and window spaces provided are off-set or are 'minor' roof / minor window elements. The windows cannot reasonably achieve the DCP 3m setback as the main fabric of the wall line, floors and building footprint is to be retained for the alterations. The upper (top floor) balcony has also been reduced to limit capacity and southward position as well as a solid screen wall for acoustic and visual privacy being included on the lower terrace (adjacent No.3 Ogilvy Rd) . The primary outlook is toward the south (gully area) and bushland reserve to the west. This issue does not warrant refusal of the application.

- 8. *Concern that the proposal will impact flora and fauna (including native owl nesting trees)*

Comment:

The proposal has been assessed by Council's Landscape assessment section, Coasts and catchments section, Biodiversity section and also includes requirements necessary by the NSW RFS for bushfire protection. Suitable conditions have been provided by Council's natural environment sections to address flora and fauna impact to ensure no unreasonable impact from the proposed site works (including erosion controls, landscaping, tree protection and the like). The NSW RFS requirements must be implemented for fire safety purposes due to the BAL-FZ position of the house. This issue does not warrant refusal of the application.

- 9. *Concern that the proposal is not in the public interest and has not taken account of neighbours amenity concerns.*

Comment:

The proposal is for alteration and additions to a private dwelling house and is therefore not assessed as "new" build (such as for a fully cleared site). Concerns raised in submissions and matters relevant to the DCP / LEP were conveyed to the applicant during the assessment period. The applicant has sought to amend the plans, including reviewing amenity concerns raised in submissions and address non-compliances with further information and design response by way of amended plans. Subject to conditions the proposal does not create unreasonable departures from the DCP and LEP and is not against the public interest for the extent of alteration and additions to the dwelling house. The proposal is not inconsistent with the pattern of surrounding residential development or create an unreasonable impact on the natural environment.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	Supported with conditions. Council's Landscape Referral section have considered the application against the zone C3 Environmental Management objectives of Manly Local Environment Plan, and the following Manly DCP 2013 controls (but not limited to): • DCP section 3: General Principles of Development, including but not limited to clauses 3.3.1 Landscape Design, and 3.3.2 Preservation of Trees and Bushland Vegetation,

Internal Referral Body	Comments
	• DCP section 4: Development Controls and Development Types, including but not limited to clauses 4.1.5 Open Space and Landscaping. The landscape outcome of the zone <i>C3 Environmental Management</i> objectives include protection and management of the ecological and aesthetic landscape values, protection of tree canopies to maintain the natural scenic qualities of the foreshore, revegetate and rehabilitate the foreshore, and ensure that the bulk and scale of development integrates with the natural environment. The Arboricultural Impact Assessment identifies five trees for removal of which trees 18, 20, 21, and 22 are exempt by species or proximity to an approved dwelling, therefore consent is not required for their removal. Tree 19 has a low significance value and as such its removal can be supported. The remaining significant existing trees within the property boundary, trees 16 and 17, have total canopy areas of approximately 26% of the site area which is allowable under the requirements outlined in the Bushfire Assessment Report. Trees 16 and 17 (and all neighbouring trees and vegetation) shall be retained and protected during works. No tree replacement will be required in order to comply with the bushfire requirements.
NECC (Bushland and Biodiversity)	Supported with conditions. The proposal seeks approval for alterations and additions to a dwelling house including a swimming pool. The comments in this referral relate to the following applicable controls and provisions: • Planning for Bushfire Protection 2019 • NSW Biodiversity Conservation Act 2016 • SEPP (Resilience and Hazards) 2021 - Littoral Rainforest and Proximity Area • Manly LEP Clause 6.5 Biodiversity Protection The proposal has been submitted with an Arboricultural Impact Assessment that has concluded that a total of 5 trees are to be removed for the development proposal to go ahead in its current form. Trees 18, 20, 21 and 22 are exempt by either species or height and tree 19 (<i>Callistemon</i> sp.) is a prescribed tree. However, the application has also been submitted with a Bushfire report that has awarded a BAL-FZ risk rating to the site and recommended that the site be treated as an Asset Protection Zone in perpetuity. As per the Landscape referral comments, no replacement planting will be required for the removal of Tree 19 but conditions will apply to ensure that landscaping works are compliant with applicable controls. The site is mapped within the Manly Biodiversity Map and therefore,

Internal Referral Body	Comments
	conditions will apply to ensure that impacts to native flora and fauna are minimised or avoided.
NECC (Coast and Catchments)	Supported with conditions. This application was assessed in consideration of: • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Resilience and Hazards) 2021 (section 2.8, 2.10, 2.11 & 2.12); • State Environmental Planning Policy (Biodiversity & Conservation) 2021 • Relevant LEP and DCP clauses. <u>State Environmental Planning Policy (Resilience & Hazards) 2021</u> 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. Clauses 2.10 (coastal environment area) and 2.11 (coastal use area) do not apply as the site is also located within the Sydney Harbour catchment area. Hence, only Clause 2.12 of the SEPP apply for this DA. <u>Comment:</u> On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Northern Beaches Planning dated February 2023, the DA satisfies requirements under clause 2.12 of the SEPP. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021. State Environmental Planning Policy (Biodiversity & Conservation) 2021 <u>Harbour Foreshores & Waterways Area</u> The subject site is located within the Sydney Harbour Catchment and is identified as being within the Foreshores and Waterways Area. Hence Part 6.6 and 6.7, Division 2 of the State Environmental Planning Policy (Biodiversity & Conservation) 2021 apply in assessing this DA. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Northern Beaches Planning dated February 2023, it is determined that the Planning Principles and Matters for Consideration of the Area have been met. <u>Coastal Wetlands and Littoral Rainforest Proximity Area</u> The subject site is also identified as " Coastal Wetlands and Littoral

Internal Referral Body	Comments
	Rainforest Proximity Area". Hence, clause 2.8 of the SEPP (R&H) apply for this DA. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Northern Beaches Planning dated March 2023, the DA satisfies requirements under clause 2.8 of the SEPP. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021. Manly LEP 2013 and Manly DCP <u>Foreshores Scenic Protection Area Management</u> The subject site is also shown to be as "Manly Foreshores Scenic Protection Area" on Council's Foreshores Scenic Protection Area in Manly LEP 2013. As such, Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013 will apply to proposed development on the site. On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Northern Beaches Planning dated March 2023, the DA satisfies requirements under Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013. As such, it is considered that the application does comply with the requirements of the Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013.
NECC (Development Engineering)	Supported with conditions. No objections to approval subject to conditions as recommended.
NECC (Flooding)	Supported with conditions. The development proposes alterations and additions to the existing dwelling and construct a new swimming pool. Subject to conditions the development is compliant with Council's flood related development controls.
External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	Supported with conditions. The proposal was referred to Ausgrid who provided a written referral response that the proposal is acceptable subject to compliance with the relevant <i>Ausgrid Network Standards</i> and <i>SafeWork NSW Codes</i>

External Referral Body	Comments
	<i>of Practice</i> . These recommendations will be included as a condition of consent.
Rural Fire Service - Local Branch - EP&A Act, s4.14	Supported with conditions. The proposal was submitted with an Bushfire Assessment by a qualified bushfire expert and referral was made to the NSW Rural Fire Service (RFS). The RFS provided a detailed referral response dated 19.4.2023 to address asset protection, landscaping, construction, water and utility services, including general fire safety advice. RFS requirements are included with the recommended conditions.
Aboriginal Heritage Office	Supported with conditions. The proposal was assessed by the Aboriginal Heritage Office. AHO requirements are included with the recommended conditions.

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.A488523-02 dated 21.9.2023).

The BASIX Certificate indicates that the development will achieve the following for both dwellings:

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

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.

Other Service Infrastructure Authorities

The application was not required to be referred to *Transport for NSW* and no other service infrastructure authority referral issues are raised pursuant to the SEPP.

Requirements of *Sydney Water* are addressed by separate processes administered directly through *Sydney Water* for assets / services owned or managed by *Sydney Water*.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

- 1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:
 - a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
 - b) coastal environmental values and natural coastal processes,
 - c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
 - d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,

- e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
- f) Aboriginal cultural heritage, practices and places,
- g) the use of the surf zone.

Comment:

The site has been inspected with regard to the natural foreshore area and the works proposed. The changes to the site and construction works will not create an unreasonable environmental impact in the coastal environment, subject to conditions for erosion control and landscaping. The proposal will not have any adverse impact on littoral rainforest area as detailed in the referral assessment made by Coast and Catchments referral section. (See details under internal referral heading within this report).

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

Comment:

The proposed works can be suitably managed to avoid adverse impacts on the foreshore. The major trees near the foreshore will be retained and landscaping works including planting will provide suitable protection for the foreshore area with tree removal for RFS requirements limited to the site and not impacting the public reserve.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

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

- c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The development will retain the existing approved use of the site for a single dwelling. The building bulk and scale an external appearance will not be readily visible from the waterway of middle harbour due to the extent of development within the backdrop of Clontarf.

Division 5 General

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

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

Comment:

The proposal is not in a location that is at increased risk of coastal hazard due to the natural topography and sandstone / hillside landscape. RFS issues are addressed by the NSW RFS referral response.

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

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

Comment:

The proposal does not adversely affect the coastal management of the foreshore area and suitable "extended" sediment control plan has been provided by the applicant (as included in Condition 1).

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, being continued on the site. Site inspection during the assessment period did not identify any obvious visible signs of contaminate or hazardous material.

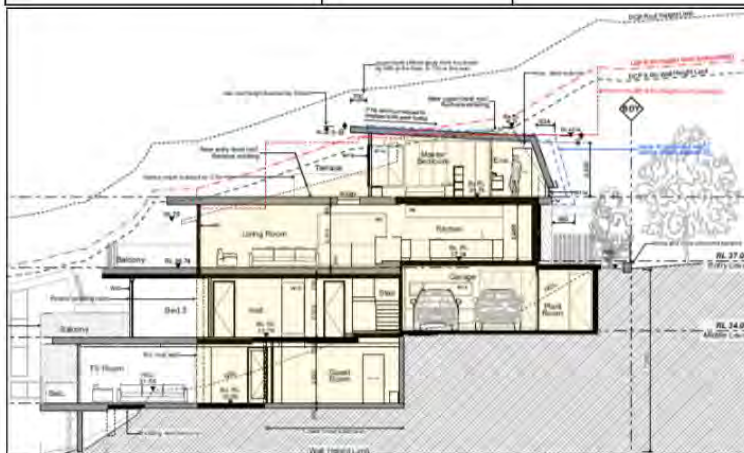
Concern regarding potential asbestos or lead paint is managed by standard practice and statutory laws for the safe handling of asbestos and demolition material, including compliance with *Australian Standards, WorkCover* and waste management conditions.

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	Existing roof structure 8.65m	1.7%	No (Existing)
		New roof structure 8.97m	5%	No
Floor Space Ratio: (Site area 472.6sqm as per Clause 4.5 of MLEP)	FSR:0.4:1 (189.04sqm)	Existing FSR 0.47:1 (222.12sqm)	17.5%	No (Existing)
		Proposed FSR 0.58:1 (275.38sqm)	46%	No
Manly DCP 4.1.3.1 (DCP Figure 30)	Undersized Lot Area U	Based on 750sqm 0.37:1	N/A	Yes (as per DCP Figure 30)



Existing ground level (including excavated) consistent with the approach taken in *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*. General height plane & natural ground slope comparison to the roof profile and relevant height lines shown dotted as per EGL and NGL. Existing subfloor has been partly excavated.

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
5.8 Conversion of fire alarms	Yes
5.21 Flood planning	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

HEIGHT OF BUILDINGS - Clause 4.6 Variation

Description of Non-compliance:

Development standard:	Building Height
Requirement:	8.5m
Proposed:	8.97m
Percentage variation to requirement:	5% (0.47m)

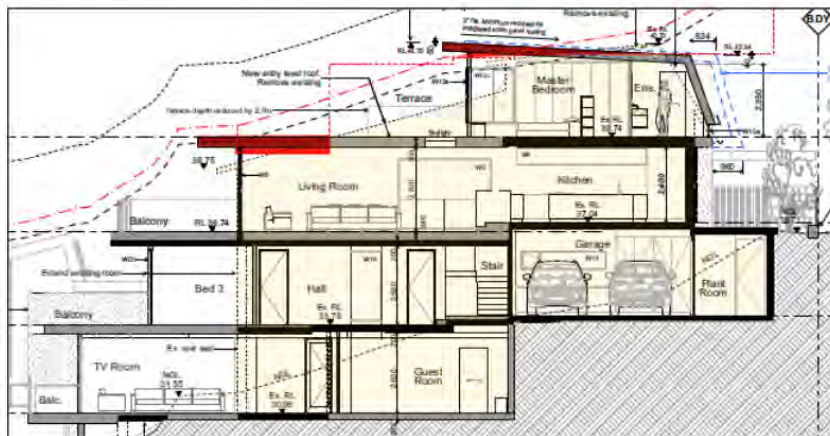


Image: Height of the dwelling house roof apex is being reshaped. Minor amendment were made to eliminate balustrade and terrace area (red) projecting above the EGL height line. Existing subfloor

excavation (partly shown) does not substantively impact visual bulk or scale considerations.

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 (attached to this report as an Appendix) has been provided seeking an exception under Clause 4.6.

In summary, the Applicant's written request is considered below within this report, and the applicant 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 prior excavation of the site within the footprint of the existing building, which distorts the height of buildings development standard plane overlaid above the site when compared to the topography of the land, can properly be described as an environmental planning ground. The altered roof form over the living room and rear balcony on the entry level is maintained below the 8.5m maximum height plane when measured to assumed natural ground levels, excluding the existing excavation.*
- *Roof pitch maximises ceiling heights in the habitable area of the existing upper floor, where ceiling heights are currently less than the minimum prescribed by the BCA/NCC, improving the amenity of the space for occupants of the dwelling.*
- *The non-compliant elements do not result in any adverse impacts upon the amenity of adjoining properties with regard to views, solar access or privacy.*
- *The breach associated with the new roof over the Entry Level living room arises as a consequence of pre-existing excavation that is not reflective of the natural topography of the land.*
- *In response to concerns raised by objectors in relation to the size of the upper floor terrace, the depth of the terrace has been reduced and the terrace is wholly maintained below the height limit."*

Consideration and Comment:

The applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, in that the general form of the existing dwelling is being retained and the height breach is influence by existing floor levels, excavation area of the garage and the shape of existing top storey. New excavated area does not change the building bulk and overall the maximum height being reduced. Minor elements of the eaves and terrace area do not unreasonably impact views, solar access or amenity of adjacent land. Manly DCP controls allow for appropriate design responses to be achieved in managing variations to building height. This includes exceptions and objectives for steep sites, particular lot size areas and environmental considerations. The applicant has provided detailed analysis of the design response and including acknowledgement of the anomaly in height lines from previous development the land. The applicant has responded to submission issues and made changes to accommodate or re-consider the design in context of concerns raised.

Overall the changes to the upper storey, roof elements do not create unreasonable intrusion on views, solar access or the amenity of the surrounding urban or natural environment. The variation therefore satisfies cls 1.3 (c) and (g) of the EPA Act.

The distribution of building height, changes in wall planes and ancillary elements that are in an elevated position (terraces / awnings) does not raise unreasonable impacts of privacy (acoustic or visual) or overshadowing to surrounding land, including the public domain.

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 C3 *Environmental Management Zone*. An assessment against these objectives is provided below.

Objectives of development standards

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 existing house has an unusual roof form for the upper storey being influenced by the creek line that 'compresses' the building footprint toward the northern end of the site. This is evident by comparison to properties further west along Ogilvy Road that have more elongated building platforms. The height of building and general profile when viewed from the street is being retained in similar format (eg. entry point, garage, upper storey, side wall setbacks, front setback) The replaced new roof design adopts a low profile roof form to respond to the prevailing architecture of the existing house and the non-compliance forms minor protrusion above the height line.

b) to control the bulk and scale of buildings,

Comment:

The elements of the building that protrude above the height plane do not create unreasonable impacts of bulk and scale due to the larger mass of the building and the main floor levels of the building being unchanged. The proposal has been amended during the assessment process (including a revised 'clause 4.6') to demonstrate a reduced non-compliance (i.e. "minimal" variation)

It is considered that the proposal is consistent with this objective.

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:

Detailed view considerations have been made with the assessment of the proposal with regard to views from nearby residential development across the site toward any harbour, foreshore or district views and the like. The site is in a location where the building cannot be readily viewed from the harbour waterway due to surrounding development and bushland. The building is part 4

storeys and steps up the slope, however the adjacent reserve and higher topography to the north affords a backdrop and when viewed from the Harbour. It is considered that the proposed building height variation maintains consistency with this objective of visual impact and views.

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:

Detailed solar access diagrams are provided to demonstrate that the proposed height variation does not create unreasonable impacts of overshadowing in terms of solar access to adjacent land. (See shadow diagrams (21.9.2023) drawn by *Ashley Barkle (Architect)*). Additionally the private open space areas and terraces are positioned facing the south (viewing across public waterway) and therefore reasonable privacy amenity is maintained to adjacent residential properties. The height non-compliance relates to a limited upper level but does not create unreasonable amenity impacts on adjacent land as from the uphill side the dwelling appears as only part 2 storey.

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 dwelling is adjacent a bushland foreshore reserve and views of the site from the harbour area and surrounding land are not unreasonably impacted by the non-compliance with the building height. It is considered that the proposed height variation maintains consistency with this objective. The non-compliance with the building height not readily discernible in the broader view of the pattern and density of surrounding development when viewed from above the site (dwelling opposite the site in Ogilvy Road) due to the difference in floor levels for dwellings on higher ground overlooking the site.

Zone Objectives

The underlying objectives of the C3 Environmental Management zone are:

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

Comment:

With regard to this objective several exempt smaller species trees are proposed to be removed and replaced with new minor planting due to RFS bushfire requirements. A landscape plan has been prepared which provides for replacement landscaping for appropriate native trees and plants in the deep soil zones and screen planting to the street. The additional height and bulk does not impact the ecological values of the foreshore. It is considered that the development satisfies this objective.

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

Comment:

The proposed height variation does not offend this objective of the zone for protecting or

restoring ecological, scientific, cultural values in that the use of the remains (for detached housing) and is provided within a landscape setting that is compatible with the height, density and pattern of surrounding development. No other (non-residential services or facilities) are proposed.

It is considered that the development satisfies this objective.

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

Comment:

Some smaller exempt species trees are to be removed and replaced with native trees. Suitable landscape planting is to be provided along the side setback area in selected spaces to screen the side wall elements and maintain a landscape setting. It is considered that the development satisfies this objective.

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

Comment:

The proposal requires no works within the foreshore area and excavation is confined to the existing building structure and new pool space. The height variation does not raise any inconsistency with this objective.

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

Comment:

The alterations and additions will not create long term adverse impact on vegetation along the foreshore or natural rock area of the foreshore reserve in that the landscaping has been refined to reduce impact of structures near the adjacent foreshore including retaining the larger trees. Additionally, replacement landscape planting will be provided for the new landscape works. The elements that are in breach of the building height do not have any unreasonable impact on water quality of the natural runoff to surrounding land.

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

Comment

The proposed elements that are in breach of the height plane for the dwelling house do not impact on the existing vegetation of the foreshore reserve area. The additional height and bulk does not impact on adjacent land use by way of unreasonable building bulk with the non-compliance influenced by the existing excavation and retained floor levels. The resultant development steps down the slope of the land and is of a scale that is consistent and compatible with surrounding dwellings. The site is affected by bushfire requirements of the NSW RFS and an appropriate bushfire hazard assessment has been prepared to accompany the application.

For the reasons detailed above, the non-compliant component of the development, as it relates to building height and demonstrates consistency with objectives of the C3 Environmental Management zone and therefore the proposed variation is supported.

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 Buildings Development Standard associated with a single dwelling house.

FLOOR SPACE RATIO - Clause 4.6 Variation

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.4:1
Proposed:	0.58:1 (275.38sqm)
Percentage variation to requirement:	46% (86.3sqm)

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

Clause 4.4 - Floor space ratio development standard is not expressly excluded from the operation of this clause.

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

The Applicant's written request (attached to this report as an Appendix) has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard. The distribution of building building bulk and FSR is satisfactory regarding the scale of the dwelling and associated concerns for managing amenity impacts, avoiding unnecessary overshadowing impacts associated with the distribution of the additions to the building in response to the topography and established pattern of adjacent development.

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

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

Comment:

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

grounds to justify contravening the development standard:

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicant's written request argues, in part:

- *"Clause 4.1.3.1 of MDCP 2013 provides that the undersized nature of a lot is a matter that Council may consider in determining whether 'compliance with the standard is unreasonable or unnecessary in the circumstances of the case. With a FSR of 0.37:1 based on a lot size of 750m², the proposed is 24.62m² less than the maximum floor space ratio prescribed by MDCP 2013 for the undersized lot.*
- *Properties on the low side of Ogilvy Road are similarly sized, with the same 0.4:1 FSR development standard. The following development consents have been issued with respect to: DA2013/0203 for alterations and additions at 3 Ogilvy Road, gross floor area 288.31m² and a FSR of 0.61:1. DA2012/0032 for alterations and additions at 5 Ogilvy Road, gross floor area of 319.3m² and a FSR of 0.675:1. DA2016/0322 for alterations and additions at 7 Ogilvy Road, gross floor area of 239.7m² and a FSR of 0.5:1. DA2015/0298 for alterations and additions at 11 Ogilvy Road, gross floor area of 271m² and a FSR of 0.57:1. DA2015/0277 for alterations and additions at 13 Ogilvy Road, gross floor area of 199.3m² and*

a FSR of 0.423:1.

- The proposed additions are generally retained within the footprint of the existing dwelling and have been designed to protect the more sensitive areas of the site.
- The resultant development steps down the slope of the land is of a scale that is consistent and compatible with surrounding dwellings.
- The proposed development has been skillfully designed to maximise amenity for future occupants of the dwelling whilst minimising impact upon the amenity of neighbouring dwellings.
- The roof is considered to have a negligible impact upon views, with the minor loss of filtered water views associated with the slight increase to the length and height of the roof [Bedroom floor area] offset by the reduction to the height of the roof at the existing ridgeline"



Image: The site and surrounding properties showing building footprint.

Consideration of the applicant's reasons provided above is made below. In summary, 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).

Consideration and comment:

- The attributable floor space of basement area and overall floor space is distributed in a manner that responds to the amenity aspects of the site (including existing floor arrangements) and limitations of the site area available. Landscape open space is not being significantly reduced overall and elements of screen planting are integrated as part of the new works
- The non-compliance with the FSR does not have a significant impact on canopy tree clearing however *Planning for Bushfire Protection* requirements do apply to the site the distribution of understorey plants and interlocking canopy trees is required for bushfire safety. These are addressed in context with the landscape plan but do not adversely impact the adjacent Sydney Harbour Foreshore area.
- Pursuant to *Clause 4.1.3.1* of the DCP the proposal is consistent with the FSR exception allowed for area "U" based on a 750sqm area (as per DCP Figure 30) since the site already has

sufficient usable site area and the battle axe shape of the lot has been appropriately applied in terms of "usable area" for the purpose of calculating FSR.

- The revised design contributes to the associated impacts of building bulk toward adjacent dwellings in terms of continuity with the height plane and impacts of privacy and overshadowing in terms of spatial separation and wall height.

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 C3 Environmental Management zone. In consideration of the public interest no public submissions of objection were received with respect to the development application from any surrounding properties.

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 proposed façade dwelling will retain a similar appearance but overall the height of the building is reduced. The change to the carport and front entry area of the dwelling does not create any adverse impact on the streetscape or foreshore..

- *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 proposed FSR does not cause any obstruction of views for any significant environmental features (including landscape heritage, and in the margins of the water edge) and does not require any wider additional bushland clearing of remnant gully forest area. A number of non-

native trees and non-native palms will be removed with replacement planting being dominated by native plant species suitable for the coastal location. The proposed scale and bulk does not remove any important landscape features or obstruct townscape features from overlooking properties adjacent the site. Council's landscape officer has reviewed the proposal and ensured the landscaping structures were refined (less impacting on the foreshore) and kept major native trees near the foreshore.



Image View from No.6 Ogilvy and wire frame outline of upper storey bulk.

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

Comment:

The development generally relies on floor space within the existing building footprint and some ground level landscaping for private open space. These ground level areas are consistent with the existing character and landscape of the foreshore area and the footprint of the dwelling is not substantially changing (expanding to spread into landscape space).

External materials and landscaping selections are responsive to the bushfire protection requirements and therefore the building relies on internal amenity and balcony space more than other properties where flatter urban land exists.

The natural site levels and landscape zones will be restored within disturbed areas from construction and with new native planting and ground covers to replace invasive plants where practicable as per the landscape plan.

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

Comment:

The FSR variation to the site area will not be responsible for any unreasonable loss of privacy, loss of water views or depreciation of amenities and it is noted it complies with the FSR variation allowance prescribed by the DCP. This factors in the battle axe shaped lot with houses adjacent and overlooking the land with the proposed house position that is on a steep foreshore location.

The proposed dwelling will not unreasonably affect the level of solar access to the adjacent neighbouring private open space. Details of solar access and natural light consideration have

been made in direct consideration under the Manly DCP and changes to the basement, roof and balcony elements do not adversely impact the adjacent 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 objective is not applicable to the dwelling house as the land is not in a business zone.

Zone objectives

The underlying objectives of the C3 Environmental Management (previously E3) zone are:

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

Comment:

The FSR variation does not offend this objective of the zone as the habitable floor area does not encroach into the foreshore building line and is set well back from the water edge on an elevated peninsula of land. A landscape setting will be maintained that is compatible with the height, density, and site constraints that influence the pattern of surrounding development.

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

Comment:

The current use of the site for a family home will remain and the proposal does not seek to introduce other forms of land use development in terms of ecological, scientific or cultural change.

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

Comment:

The FSR variation does not offend this objective of the zone in that the use remains for detached housing in a low density environment, and is provided within a landscape setting that is compatible with adjacent land and the foreshore environment.

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

Comment:

The alterations and additions are situated well back from the foreshore line and overall excavation works are not extensive across the site in terms of seeking to reshape the broader

natural ground areas. The FSR variation does not invoke any negative impacts on geological features, the foreshore quality and surrounding bushland. No major canopy trees are required to be removed.

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

Comment:

The proposal includes a larger lower ground floor area however no works are near the rear boundary, and do not interfere with the creekbank or the LEP foreshore setback. The dwelling will generally maintain the natural values of the foreshore area, and does not unreasonably affect adjacent foreshore space or remnant vegetation and suitable drainage will be provided to minimise sedimentation and minimise impact on water quality of the Harbour.

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

Comment:

The alterations and additions are generally confined to the main structure of the existing house with no adverse impact on foreshore natural rock area. Replacement landscape planting will be provided subject to RFS APZ provisions. The building bulk associated with the new bedroom changes, living space and lower ground areas, however no unreasonable impacts on privacy, views or sunlight will be created given the pattern of surrounding development, and subject to conditions.

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the C3 Environmental Management zone.

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

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

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

Manly Development Control Plan

Built Form Controls

Built Form Controls	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density D9: 1 dwelling per 950sqm	1 dwelling per 472.6sqm (Existing lot)	50.2% under lot size	No (As approved - undersized lot)
4.1.2.1 Wall Height	North: 7.2m	5.2m (includes PV tile / mansard section)	N/A	Yes
	East: 8.0m wall (based on gradient 1:4+)	4.3m to 8.6m	7.5%	No
	West: 8.0m wall (based on gradient 1:4+)	5.0m to 8.8m	10%	No
	South: 7.2m	4.4m to 8.8m	N/A	Yes
4.1.2.2 Number of Storeys	2	4 (Existing)	200% (No change)	No (As approved)
4.1.2.3 Roof Height	Height: 2.5m	0.7m	N/A	Yes
	Pitch: maximum 35 degrees	3 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line or 6m	3.7 to 3.3m (Existing wall line)	Prevailing building line	No (Existing roof edge 2.4m setback)
4.1.4.2 Side Setbacks* and Secondary Street Frontages 1mw : 3mh and 3m window separation <i>*Based on wall height at that level.</i>	East: 2.8 (Upper storey)	East 3.1	N/A	Yes
	West 2.9m (Upper storey)	West: 1.3m	1.6m (No change)	Yes (Existing wall line)
	Windows: 3.0m	East West		No

4.1.4.4 Rear Setbacks	8.0 metres	South: 19m to property boundary	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area (OS4): Site area 472.6sqm	Total Open Space 60% of site area 283.5sqm	75% (356sqm proposed)	N/A	Yes
	Open space above ground max. 25% of total open space 70.9sqm (89sqm as per proposal)	21.6% (79sqm)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space 113.4sqm (142sqm as per proposal)	73% (260sqm) (natural landscaping)	N/A	Yes
4.1.5.3 Private Open Space	18sqm	26.3sqm (main alfresco off living / dining)	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	Side access to garage (not visible from street)	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 car spaces	N/A	Yes
4.1.9 Swimming Pools	Max 1m above ground 1.5m to boundary	1.9m 1.0m	0.9m+ 0.5m	No No
4.1.0 Fencing	<1.0m at front boundary / transparent up to 1.5m	0.9-1.1m (part open style)	N/A	Yes
4.4.5 Earthworks	1m in depth	2.2m (subfloor area)	1.2m+	No
5.4.4 Setback to riparian watercourse	APZ / detention / POS	On merit (creekline passes though centre of property / current APZ)	N/A	Yes (no works in creek bank)

* Refer to detailed merit assessment under the relevant DCP section heading within this report.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.3.3 Footpath Tree Planting	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.6 Energy efficiency/conservation requirements for non-residential developments	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	Yes	Yes
4.1.10 Fencing	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	No	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

The objectives and requirements of *Clause 3.1.1 Streetscape (Residential areas)*, are addressed as follows:

- Streetscape is defined (see Dictionary in the DCP) and represents the inter-relationship between buildings, landscape and open spaces in the street scene. Local amenity and identity are closely linked to streetscape character. 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.*



(*Cupressus sp.* tree in naturestrip to remain).

Image: Existing appearance to the streetscape. Image: Proposed appearance to the streetscape.

This section of the DCP includes consideration of garbage storage, design and visual improvement, front fences, garages, roof form and dormer windows.

Comment:

- The proposal has been amended during the course of the assessment to locate the bins in the basement garage (previously in the front setback which has enabled a more open style entry area to the street to be achieved pursuant to the objectives of this clause.
- Changes to the roof form have been made during the assessment to address streetscape consideration that included reducing non-compliance, including window element and refinement to the roof style. It should be noted that the existing roof style facing the street has influence the design however this is being replace with new integrated PV roof tiles. The alterations include positioning a bathroom at the front (top floor master bedroom) and therefore window glazing facing the street has been designed as "footwell" style floor window below the

low level eave.

- The innovative roof form is consistent with the existing house but provides a new contemporary design to replace the existing appearance (see images above). The front elevation is not a traditional dormer but is consistent with the precedent of the existing architecture of the house as it currently appears. The new PV tile are low reflective material and designed to provide a sustainable energy source for the house.
- The proposal has been amended during the course of the DA assessment to open up the front fencing style and reduce the height and provide landscape buffer behind for privacy and natural screening. The restyled front fencing is consistent with the objectives of this clause.
- The existing garage position will remain the same and faces the side boundary below street level which is consistent with the objectives of this clause to not dominate the streetscape.

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

3.3.1 Landscaping Design

The objectives and requirements of Clause 3.3.1 Landscaping Design (including landscaping within the foreshore zone), are addressed as follows:

- *To encourage appropriate tree planting and maintenance of existing vegetation.*
- *To retain and augment important landscape features and vegetation remnant populations of native flora and fauna.*

Merit Assessment Comments

- The proposal has been amended to ensure landscaping is appropriate to the the foreshore area and lower slopes of the site will maintain major canopy trees. Planting will include suitable species with landscaping works that do not unreasonably impact the bushfire APZ.
- The existing lower slopes of the site are close to a creekline that bisects the middle of the site however adequate separation distance is maintained to ensure no unreasonable impact on the riparian area / creek bank.
- Landscaping proposed is appropriate to meet the objectives of 5.4.1 Foreshore Scenic Protection Area.

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

3.4.3 Maintenance of Views

Merit consideration:

The development is considered against the objectives and requirements of *Clause 3.4.3 Maintenance of Views* as follows:

- *To provide for view sharing for both existing and proposed development and existing and future Manly residents.*
- *To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).*
- *To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.*

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

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



Image: Broad views are available from terrace and living areas. The positions of the proposed house in bottom far left (obscured by dense tree canopy LHS)

Comment:

The views are gained from living areas balcony and terrace but the whole of the view is expansive (toward the Mosman and middle harbour area and associated foreshores). Foreshore on the nearside is not readily visible. There are various elements of tree canopies, boating activity, roofscapes and the like that form part of the views from various positions / vantage points (as per image above). Properties from No.6 to No.10 Ogilvy overlook the site toward the site in a SSW to SW arc.

- *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:

Views are enjoyed from deck areas principally facing easterly / northeast the harbour water, from ground level and above where open / glazed facades and open balconies / terraces are used for the easterly aspect. The views are across the front and directly over the road reserve of Ogilvy Road. Views are enjoyed from standing and sitting position. Views from No.6 are from a battle axe lot and therefore cross rear and side boundaries and the road reserve.



Image: Diagonal view line with dwelling / site on LHS of picture.



Observation of the surrounding pattern of development including elevated, terrace levels and storey heights comparative to the property alignment at No.6 Ogilvy Road. Note the difference in ground levels between the properties affords minimal interference in the broad views due to much higher topography on the high side of the street. Image above shows the wide setbacks and much higher position of dwellings opposite the site in Ogilvy Road.

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

Comment:

The alterations and additions will reduce the upper bulk and afford a very similar quality of the view with minimal change. The site and surrounds have been inspected and in terms of view considerations and the change to the upper roof profile, including the lift and skylight the view loss is minimal and would be assessed as negligible if fully compliant height and no water element was affected. (It should be noted that height non-compliance is influenced by existing excavation, floor and wall elements retained which is considered on balance with the whole of the views available, including living spaces, alfresco areas and the pattern of surrounding development)

- *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.*



Image: General view overlooking (No.6 Ogilvy) with reshaped roof line superimposed.

Comment:

View impacts have been considered in the assessment of the proposal and site inspection demonstrates that the minor non-compliance with the height, envelope and roof profile position has a minimal (minor) view impact. Similarly the design of the proposal includes a minor non-compliance with the 8.5m height of building control based on excavated ground level. The roof from selected is an integrated PV tile with low reflective and there are no glass skylights in the upper roof surface to create reflection.

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.

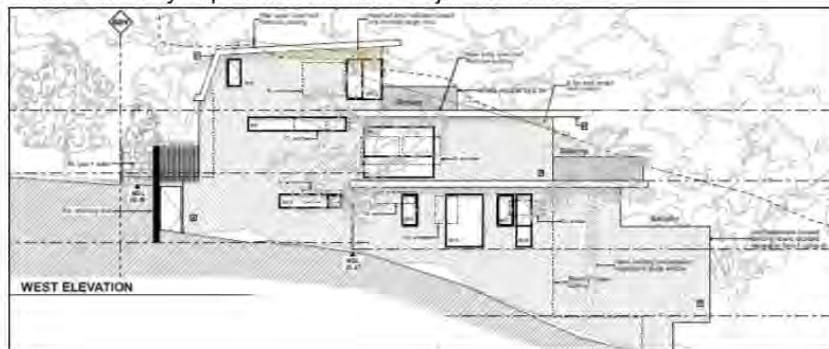
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

The objectives and requirements of Clause 4.1.2 Height of Buildings (incorporating Wall Height, Number of Storeys and Roof Height) are addressed as follows:

- *The LEP objectives for the Height of Buildings at clause 4.3 are particularly applicable to this DCP clause.*
- *Exceptions to Height: Where an existing building exceeds the maximum height controls in this plan or the height of building standards in the LEP, any alterations and/or additions to the building must not increase the overall height of the existing building.*
- *For the purpose of determining maximum wall height, the slope of the land is calculated at natural ground level along the full length of the proposed wall expressed as a ratio.*
- *Buildings must not exceed 2 storeys, except on land in areas 'L' and 'N1' on the LEP Height of Building Map and notwithstanding the wall and roof height controls in this plan.*
- *Pitched roof structures must be no higher than 2.5m above the actual wall height.*
- *Roof parapets may extend up to 0.6m above the actual wall height where Council considers appropriate.*
- *The maximum roof pitch must be generally no steeper than 35 degrees.*

Merit Assessment

- The objectives of the 'height of buildings' development standard pursuant to the MLEP are addressed in detail within this report under heading clause 4.6, in which wall height is also considered.
- The proposal is consistent with the exceptions allowance within this clause in that the overall building height has been reduced by 0.3m from the existing roof apex to the apex of the new skylight. Overall the majority of the roof space is lowered by as much as 1.3m. In this regard the proposal complies with this clause in that alterations and additions *must not increase the overall height of the existing building*. Therefore the proposal demonstrates a consistent counter-response required by the DCP to the non-compliance with wall height and 2 storey limit.
- The DCP permits a maximum wall height of 8.0 metres (gradient 1:4+). The existing dwelling has a non-compliant wall height of up to 8.8m. The development will partly increase the existing non-compliance, resulting from an existing a maximum wall height of 8.3 metres. No adverse amenity impact is created on adjacent land.



- The existing house is 4 levels and the proposal seeks to retain existing floor levels and reconfigure the roof and extend the building southwards with some subfloor excavation also. The shape of the new house will retain similarities in terms of the garage access and street appearance with the new roof shape that includes integrated solarcell tiles to replace the current concrete tile appearance. This allows for a more solar responsive building profile to accord with the natural south facing slope and minimises amenity impacts on surrounding land (views, bulk, overshadowing).
- The wall non-compliance is influenced by the existing floor levels (floor to ceiling heights retained) and wall elements being retained and wall sections above the 8.0m height generally limited to the southern end of the master bedroom space and minor section of the living area southern roof / wall end. Overall the floor to ceiling heights are 2.7m or less which is not excessive to the BCA.
- No parapet element is proposed and eaves are not proposed at the upper level, however minor wall sections and selected windows protrude into the side boundary envelope. These are limited to selected wall sections and do not create adverse unreasonable amenity impacts to adjacent land.
- The new roof form has a low degree pitch (along the main span - flatter internal ceiling) and a steeper pitch (higher apex) would marginally increase the water view impact from properties opposite the site.

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

4.1.3 Floor Space Ratio (FSR)

Floor Space Ratio objectives in the DCP pursuant to Clause 4.1.3, support the purposes of the Manly LEP in relation to maintaining appropriate visual relationships between new development and the existing character, view considerations and landscape area as follows:

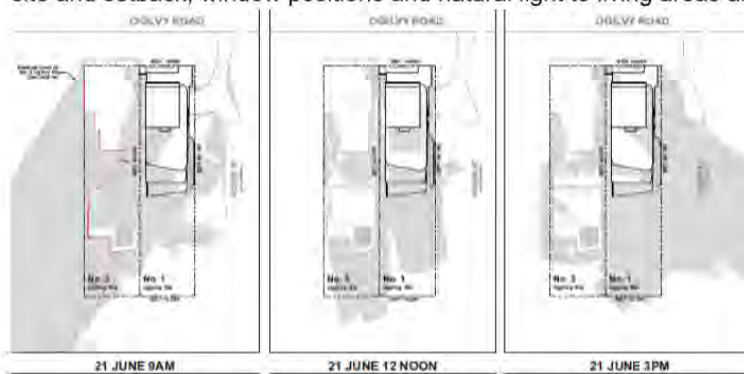
- *To ensure the scale of development does not obscure important landscape features.*
- *To minimise disruption to views to adjacent and nearby development.*
- *To allow adequate sunlight to penetrate both the private open spaces within the development site and private open spaces and windows to the living spaces of adjacent residential development.*

Merit Assessment Comment:

- The site has a small creekline that bisects the property and the proposal is therefore confined to the northern half of the site that influences the 4 storey appearance. This however also contributes to more available natural landscape space as the southern half of the site is isolated from being developed. Generally the existing height, scale and footprint is being retained. The open interface with the bushland reserve is to be retained for movement of fauna

toward the broader the foreshore area. In this regard, the building footprint will remain consistent with the existing open space and landscape areas of the site. Larger native trees away front the house will be retained as part of the design, and as per RFS requirements.

- The proposal is consistent with the objective to minimise disruption to landscape features in that the principle change to FSR is distributed between the floor level and partly concealed in the basement / lower floors and by the additional rationalised space as part of the upper storey.
- The proposal does not obstruct views and is situated toward the harbour / foreshore area, given the existing shape and bulk of the upper storey to be replaced with the new bedroom level that retains a similar height and profile.
- The proposal will retain adequate sunlight to adjacent land and private open space within the development and does not give rise to any unreasonable environmental planning ground to the approval of the proposal pursuant to clause 1.3 (Aims) of the Act. Detailed overshadowing diagrams have been provided to demonstrate overshadowing cast by the additions and alterations and site inspection carried out to No.3 Ogilvy to observe the interface between the site and setback, window positions and natural light to living areas and ancillary rooms.



- Clause 4.1.3.1 of MDCP 2013 provides that the undersized nature of a lot is a matter that Council may consider in determining whether 'compliance with the standard is unreasonable or unnecessary in the circumstances of the case' and 'there is sufficient environmental planning grounds to justify contravening the development standard under clause 4.6(3) of MLEP 2013. The proposal is consistent with this allowance being only 472.6sqm and the "Figure 30" of the MDCP providing FSR allowance based on 750sqm with which the proposal would otherwise comply with an FSR of 0.37:1 based on 750sqm.

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

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

The objectives and requirements of *Clause 4.1.4 Setbacks (front, side and rear) and Building Separation*, are addressed as follows:

- 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.
- To ensure and enhance local amenity.
- To promote flexibility in the siting of buildings.
- To enhance and maintain natural features.
- To assist in appropriate bush fire asset protection zones.

Merit Assessment Comments:

- A side boundary setback equivalent of 1/3 of the wall height is required on the site which equates to 1.6 metres on the western side for the upper wall height of 8.8metres. Along the eastern side the wall setbacks comply with the 1:3 side envelope. Non-compliance with window positions along the western setback (with No.3 Ogilvy Road) are addressed by their offset position, higher position (overlooking roof space) or being 'minor / smaller sized' windows for bathroom / stairwell and the like.

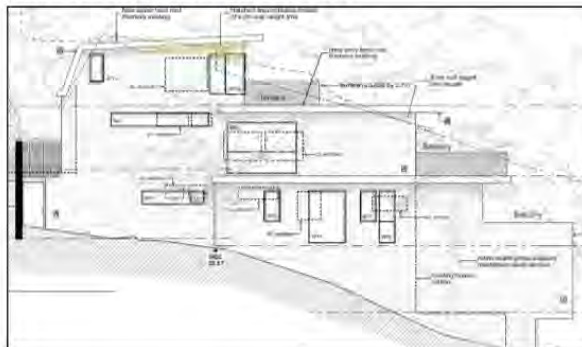


Image: Western elevation window placement and style. Including screen wall to (lower) pool terrace.

- The side setback on the eastern side includes a bushland reserve that is an unformed road reserve (House Street). The existing driveway accesses the side of the house across the side setback and therefore across the reserve. This arrangement will remain unchanged for the proposal. New side fencing is proposed for the security of the pool area (safety) only and for the front entry accessed directly from Ogilvy Road. The proposal is consistent with the objectives of this clause for the front setback and side setback arrangement proposed, subject to recommended privacy screens for the large planar windows shown for the living room and master bedroom. The reason for some privacy screening is that despite the wide separation (20m) and trees between the site and rear yards along Barrabooka Street there are clear lines of sight. At present the existing dwelling does not have any large side facing windows and the new large planar windows will alter (increase) observation lines. Therefore, external privacy screening is recommended to direct the line of sight (southward) along House Street reserve area.



Image: Eastern elevation with larger planar windows 'privatise' outlook of the adjacent reserve. Note creek position and lower position of No.3 Ogilvy Road (superimposed) to the east.

- The proposal does not impact unreasonably impact the existing streetscape views along Ogilvy Road due to much higher dwelling positions on the northern side of Ogilvy Road and that properties to the west of the site have generally built out the front setbacks with garages, pools and substantial building footprints. The proposed alterations and additions rely on the existing wall lines, setback and roof profile to achieve the desired floor arrangement, including access to the proposed swimming pool at the lower level.
- The proposal is consistent with maintaining local amenity by the design response to ensure no unreasonable impact on privacy (by windows, balconies, screens, landscaping and the like). Overall the building maintains suitable access to natural light, direct sunlight and air circulation for the given that the main exterior wall lines for the dwelling house will remain on their original setback, except for some new minor incursions along the southern boundary (BBQ and kitchen corner window). The non-compliance does not create any unreasonable amenity impact on No.3 Ogilvy Road since the proposed dwelling generally overlooks roof space or has a southerly aspect at the lower floors and terrace areas.
- The proposal is consistent with the DCP objective to allow for the flexibility in housing styles and renewal including modern styling, and consideration for rationalising internal circulation space and bedroom areas is acceptable. While the proposal has a 8.8m height side wall element to the west (adjacent No.3 Ogilvy Road) this does not create an unreasonable loss of sunlight or privacy impact (visual and acoustic) due to the proposed position. Privacy concerns for properties in Barrabooka Street that have POS facing the site (approx 20m to west) have been considered as raised in submissions. A condition is recommended for the main large living room planar window on this side (W7a-b-c) for an external custom privacy screen / louvres.
- The proposal maintains the existing dwelling and side walls alignment and the window changes are superimposed on drawing A.07 to show positions in relation to No.3 Ogilvy Road. Side windows shown are appropriate for the room in consideration of light, ventilation, privacy and general usage. At the rear the terrace areas generally overlook the creekline and adjacent bushland reserve (House Street).
- The nature of development does not unduly detract from the context of the site, street character and particularly in relation to street frontages and front and side setbacks, minor non-compliance with side facing windows (upper storey) and in consideration of the context of

neighbouring properties and the prevailing building lines / setbacks in the immediate vicinity to allow for flexibility in the siting and development of buildings. The proposed setbacks allow for compliance with the *Building Code of Australia* for maintenance, access, drainage work and emergency requirements (fire safety egress).

- Consistency is maintained to the rear building line of neighbouring properties with natural features (trees / lawn / garden and deep soil zones). The main pattern of deep soil landscaped open space is retained with elements of landscaping, being within the Manly Foreshore Scenic Protection Area and the external sandstone feature work / materials of the building maintains visual interest and reasonable amenity to the private open space, rear setback areas and front entry space / garage area.
- An appropriate bushfire hazard assessment has been prepared to accompany the application (see report No.4199 by *Bushfire Planning and Design*) to address the use of asset protection zones (BAL-FZ).

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

4.1.5 Open Space and Landscaping

The objectives and requirements of *Clause 4.1.5 Open Space and Landscaping*, are addressed as follows:

- *To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.*
- *To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.*
- *To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.*
- *To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.*
- *To minimise the spread of weeds and the degradation of private and public open space.*
- *To maximise wildlife habitat and the potential for wildlife corridors.*

Merit Assessment Comments:

- The site does achieve compliance with more than 60% total open space distributed across the site, including improvement to terrace areas and replacement planting (consistent with NSW RFS requirements) in the front, side and rear setbacks. Renewal / refurbishment of ground level landscape elements will be provided to complement the redevelopment work and maintain long term biodiversity of native flora and fauna appropriate to the area. The NSW RFS has issued general terms of approval for bushfire protection requirements.

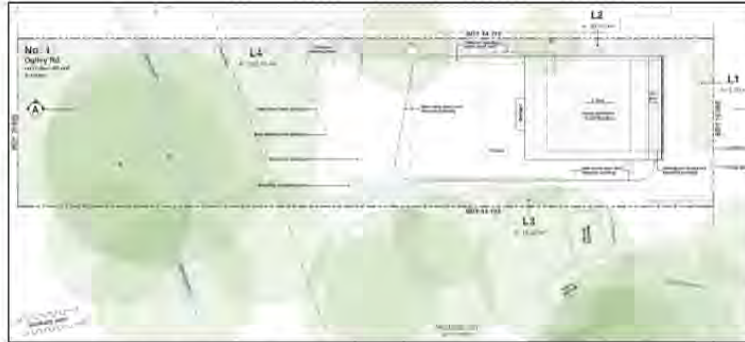


Image: Photomontage of landscaping ground level landscape area and adjacent reserve.

- Appropriate areas of deep soil soft landscaped areas and open space at ground level is provided to support tree planting and the maintenance of outdoor areas for the absorption of rainfall and runoff. The landscape plan will not create any unreasonable risk to the spread of weeds and the degradation of private and public open space and the architectural drawings updated to reflect the changes in the front setback and fencing.
- A suitable landscaping plan has been designed to maintain reasonable levels of amenity including sunlight, privacy and neighbours outlook and addressing the streetscape of Ogilvy Road. In this regard, the plans have been amended to ensure minimal structures in the front setback and pool details for the side setback area. Tree protection is addressed by condition as per the Landscape referral response.
- Deep soil zones are proved at the rear for garden areas to be maintained as an extension of the rear terrace redevelopment and work in unison with existing stormwater connections to be used. No additional OSD elements are required and the proposal meets BASIX requirements for water savings, rainwater tanks and inclusion of landscaping elements.

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

4.1.7 First Floor and Roof Additions

The objectives and requirements of *Clause 4.1.7 Floor and roof additions*, are considered as follows:

First floor additions must complement the architectural style of the ground floor and where possible retain existing roof forms. Notwithstanding setback provisions, the addition may follow the existing ground floor wall setbacks providing adjoining properties are not adversely impacted by overshadowing, view loss or privacy issues.

The dwelling and the form of alterations and additions must retain the existing scale and character of the street and should not degrade the amenity of surrounding residences or the aesthetic quality of the former Manly Council area. In this regard, it may be preferable that the addition be confined to the rear of the premises or be contained within the roof structure.

The Manly DCP states that where an existing building exceeds the maximum height controls in this plan or the height of building standards in the LEP, any alterations and/or additions to the building must

not increase the overall height of the existing building.

Clause 4.1.7.1 permits that "Notwithstanding setback provisions, the addition may follow the existing ground floor wall setbacks providing adjoining properties are not adversely impacted by overshadowing, view loss or privacy issues." However, this clause also provides that "alterations and additions must retain the existing scale and character of the street and should not degrade the amenity of surrounding residences or the aesthetic quality of the former Manly Council area. In this regard, it may be preferable that the addition be confined to the rear of the premises or be contained within the roof structure".

Clause 4.1.7.2 seeks that "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. 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."

Merit Assessment:

- The alterations and additions involve using the main ground wall line and overall existing building mass to support the roof change for the upper storey additions and changes to the entry area are not visible from the street. The roof is a similar shape but was refined to provide a low window and greater setback. In this case it is noted that the 'mansard' face of the roof to be replaced uses integrated PV tile system and hence adopt a similar shape to the existing tiled roof. This will retain the existing 4 storey appearance from the side and south, but retains a part 2 storey appearance at the front / street) entry. The shape and styling of the existing upper roof is being replaced and the new additions are consistent with the adjoining properties in terms of building bulk, height and general appearance including treatment to roof material. (In this case the upper roof material is integrated PV tile cells). Window replacements and new windows do not create unreasonable overlooking of adjacent dwelling due to off setting of neighbouring dwellings and higher level overlooking roof space. Reasonable privacy is therefore maintained as neighbouring POS to No3 Ogilvy Road is further southward and the dwelling has a central courtyard.
- The proposed additions reduce maintain a similar height but still vary the LEP building height control and increase the FSR non-compliance. This is addressed in detail under the heading "Clause 4.6" within this report. During the assessment period minor changes were made to reduce the variation to the roof profile address privacy and bulk, in particular reducing selected balcony (area) elements. The position and area of the open rear terrace and front balconies is consistent with the pattern of development in the area, along Ogilvy Street for such narrow lots (with outlooks toward the harbour) and the style and shape of the roof is an appropriate renovation / modernisation proposed for the house. The upper storey keeps its resemblance to a loft storey when viewed from the street (due to the roof/PV tile cladding being used).

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

proposal is supported, in this particular circumstance.

4.1.9 Swimming Pools, Spas and Water Features

A merit assessment against the objectives and requirement of *Clause 4.1.9 Swimming Pools, Spas and Water Features* is as follows:

- *To be located and designed to maintain the privacy (visually and aurally) of neighbouring properties and to minimise the impact of filter noise on neighbouring properties;*
- *To be appropriately located so as not to adversely impact on the streetscape or the established character of the locality;*
- *To integrate landscaping; and*
- *To become an emergency water resource in bush fire prone areas.*

Comment:

- The new pool location is along the eastern side boundary and therefore beside the adjacent park. The pool is situated partly above existing ground level and partly elevated due to the steep slope. The side setbacks are protected by privacy measures for landscaping planter structures along close edge of the pool area and batten style timber safety fence. Neighbouring properties overlook the site from a considerable distance away (approx 20m +) with no close private open space (less than 3m away) near to the pool the eastern side.



Image: Position of new pool structure on site site partly at ground level adjacent the public reserve.

- The location of the pool is not readily visible from the street or foreshore due to the position of the pool along the side of the house and on the northern side of the creekline. The pool has an open style slatted fence for security and at the southern end is well above ground level which prevents access from the reserve.
- Suitable landscape planting is provided along the eastern edge with planter box structures. The landscaping regime is appropriate for the foreshore area location in terms of use of native species and other plants, as assessed by Council's Landscape Officer.
- The site is affected by bushfire prone land (Flame zone) but the availability of the pool due to the steep land and driveway by RFS firefighting appliances would be secondary to other pressurised water connection points in the vicinity. An appropriate bushfire hazard assessment has been prepared to accompany the application (see report No.4199 by Bushfire Planning and Design.)

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

5.4.1 Foreshore Scenic Protection Area

Merit Assessment

Development in the Foreshore Scenic Protection Area must not detrimentally affect the 'visual or aesthetic amenity of land in the foreshore scenic area nor must the development similarly effect the views of that land, including ridgelines, tree lines and other natural features viewed from the Harbour or Ocean from any road, park or land in the LEP for any open space purpose or any other public place.

Any adverse impacts considered in this paragraph will be mitigated. In accordance with these LEP objectives Council seeks to conserve and preserve tree canopies and street trees, wildlife corridors and habitat and minimise cumulative impacts on escarpment, rock shelves and other natural landscape features.

Comment:

- The scale of development is commensurate with surrounding development along the foreshore area near the site and the renovations and landscape work appropriately respond to the existing conditions of the site, including access, excavated areas, slope and visual outlook. Works proposed in the area are not in the immediate foreshore setback area and are not readily visible due to larger buildings (westward) that limit exposure of the site to the harbour area.
- The bulk and scale of development is responsive to the design of the existing large dwelling house and consistent within being alterations and additions. The changes generally expand the existing floor plate down slope except for some subfloor excavation at the lower level also. The change to height and FSR variations do not create unreasonable impacts to surrounding land or diminish the LEP objectives.
- The proposed dwelling maintains a residential outlook toward the adjacent bushland reserve and the overall height of the building, use of materials and colours is consistent with the urban area. The appearance of the building will not create unreasonable visual impact when viewed from public places along the middle harbour foreshore or the waterway.
- The proposed development requires the removal of some minor trees, with the retention of all nearby trees of significance. The application also proposes new native species landscaping that is consistent with APZ requirements. Bushfire protection requirements are satisfactory for the bushfire buffer area (as detailed in the submitted bushfire assessment report).

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

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 \$15,731 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,573,114.

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 not satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environment 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 not be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

PLANNING CONCLUSION

This proposal, for alterations and additions to a dwelling house, including new (replacement) pool structure, landscaping and ancillary works. The proposal has been referred to the Development Determination Panel (DDP) due to more than 5 submissions received and changes to the existing FSR development standard by more than 10%. The variation sought to the FSR is 0.58:1 (46%) arising from the undersized lot and rationalising the central floor levels, additional lower level rooms and expanded upper storey bedroom. The variation is consistent with the larger floor areas / bulk and scale of adjacent to the west, and opposite the site, in Ogilvy Road.

Additionally the proposal seek a 5% (0.47) variation to the 8.5m height of buildings development standard arises from the existing floor to floor heights and multi-storey configuration.

The concerns raised in the objections regarding building bulk, height, overshadowing, clearing, privacy and views have been addressed and no special conditions are recommended except for requirements to ensure RL's are confirmed during construction and custom privacy screen submitted.

Other critical development assessment issues for involved consideration of setbacks, interface with adjacent dwellings and construction management. Minor amendments were received during the assessment period to assist in addressing these issues.

Overall, the development is appropriate design for alteration and additions that does not create unreasonable amenity impacts with regard to the planning controls and will result in satisfactory outcomes for the site when viewed from surrounding land and the harbour area. The proposal has therefore been recommended for approval, subject to conditions to address amenity considerations and standard requirements.

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 *Height of Building* and clause 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 DA2023/0302 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 11 DP 2610, 1 Ogilvy 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 Architectural Drawings				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
A.00	B	Cover Sheet (including window schedule)	Ashley Barkle	21.9.2023
A.01	B	Site Plan	Ashley Barkle	21.9.2023
A.02	B	Lower Level Plan	Ashley Barkle	21.9.2023
A.03	B	Middle Level Plan	Ashley Barkle	21.9.2023
A.04	B	Entry Level Plan	Ashley Barkle	21.9.2023
A.05	B	Upper Level Plan	Ashley Barkle	21.9.2023
A.06	B	North and East Elevations (including exterior finishes)	Ashley Barkle	21.9.2023
A.07	B	South and West Elevations (including exterior finishes)	Ashley Barkle	21.9.2023
A.08	B	Sections	Ashley Barkle	21.9.2023

Engineering and Landscape* Drawings				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
CIV1	DA	Sediment and Erosion Control Plan	Barrenjoey Consulting Engineers	20.2.2023
SW1	DA	Stormwater Management Plan	Barrenjoey Consulting Engineers	20.2.2023

*Landscaping work are subject to NSW Rural Fire Service requirements and Arborist plan TMP01 (Tree Management Plan) dated 11.11.2022

Approved Reports and Supporting Documentation			
Document Title	Version	Prepared By	Date of

	Number		Document
BASIX Certificate A488523-02	2	Ashley Barkle	21.9.2023
Bushfire Risk Assessment 4199	-	BPAD	29.11.2022
Arboricultural Impact Appraisal and Method Statement	-	Naturally Trees	11.11.2022
Geotechnical Investigation J4588	-	White Geotechnical Group	26.10.2022
Flood Inundation and Risk Assessment 230102	-	Barrenjoey Consulting Engineers	Feb 2023
Waste Management Report	-	Applicant	1.9.2022

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	14.4.2023
NSW Rural Fire Service	NSW RFS Referral Response	19.4.2023
Aboriginal Heritage Office	AHO Referral Response	29.3.2023

(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 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 Manly Local Environmental Plan 2013, 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. 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.
 - iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The

amount payable is subject to indexation at the time of payment.

- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

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

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$15,731.14 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$1,573,114.38.

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

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

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

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

7. Security Bond

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

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

All bonds and fees shall be deposited with Council prior to Construction Certificate or

demolition work commencing, and details demonstrating payment are to be submitted to the Certifier prior to the issue of the Construction Certificate.

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

8. Flooding

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

Building Components and Structural Soundness – B1

All new development below the Flood Planning Level of 27.66m AHD shall be designed and constructed as flood compatible buildings in accordance with Reducing Vulnerability of Buildings to Flood Damage: Guidance on Building in Flood Prone Areas, Hawkesbury-Nepean Floodplain Management Steering Committee (2006).

Building Components and Structural Soundness – B2

All new development must be designed to ensure structural integrity up to the Flood Planning Level 27.66m AHD, taking into account the forces of floodwater, wave action, flowing water with debris, buoyancy and immersion.

Building Components and Structural Soundness – B3

All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level 27.66m AHD. All existing electrical equipment and power points located below the Flood Planning Level must have residual current devices installed to cut electricity supply during flood events.

Fencing – F1

New fencing (including pool fencing, boundary fencing, balcony balustrades and accessway balustrades) shall be open to allow for the unimpeded movement of flood waters. It must be designed with a minimum of 50% open area from the natural ground level up to the 1% AEP flood level of 27.16m AHD. Openings should be a minimum of 75mm x 75mm.

Storage of Goods – G1

Storage areas for hazardous or potentially polluting materials shall not be located below the Flood Planning Level 27.66m AHD unless adequately protected from floodwaters in accordance with industry standards.

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

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

9. Stormwater Disposal

The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches

Council's Water Management for Development Policy. Details by an appropriately qualified and practicing Civil or Hydraulic Engineer demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with Council's policy are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

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.

10. **Amendments to the approved plans**

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

- An external privacy screen to the west facing window (W7a,b,c glazing) is to be provided to limit direct view lines west from the living room window. External louvres are to have a maximum 100 millimetre clear spacing and be a minimum height of 1.5 metre/s above floor level RL36.74, shown on the approved plans.

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

Reason: Amenity to private open space facing the site in Barrabooka Street.

11. **Installation and Maintenance of Sediment Control**

Prior to any works commencing on site, including demolition, an erosion and sediment control plan must be prepared by a suitably qualified person in accordance with the following documents and provided to the Principal Certifier:

1. Council's relevant development control plan,
2. The guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the Blue Book) (as amended from time to time), and
3. The 'Do it Right On-Site, Soil and Water Management for the Construction Industry' (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust) (as amended from time to time).

Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To ensure no substance other than rainwater enters the stormwater system and waterways.

12. **Compliance with Standards**

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**13. 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:

- i) tree 19 - *Callistemon* species,
- ii) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised building works.

14. Pre-Construction Dilapidation Report

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifier prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Property / Properties:

- No.3 Ogilvy Road, Clontarf
- Any other adjacent public land assets / private property assets, as appropriate and in close proximity, that may be impacted.

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifier and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifier must be satisfied that the requirements of this condition have been met prior to commencement of any works. If access is denied, then no dilapidation report is required.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage arising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

15. Installation and Maintenance of Sediment and Erosion Control

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site

DURING BUILDING WORK**16. 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.

17. 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.

18. Tree and Vegetation Protection

- a) Existing trees and vegetation shall be retained and protected, including:
 - i) all trees within the site not approved for removal, including trees and vegetation nominated for retention on the approved Plans,
 - ii) all trees and vegetation located on adjoining properties,
 - iii) all trees and vegetation within the road reserve.
- b) Tree protection shall be undertaken as follows:
 - i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
 - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other

- vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
 - vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
 - vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
 - viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
 - ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
 - x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
 - xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

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

Reason: Tree and vegetation protection.

19. 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 with minimum AQF Level 5 in arboriculture during the works.

In this regard all protected trees shall not exhibit:

- i) a general decline in health and vigour,
- ii) damaged, crushed or dying roots due to poor pruning techniques,
- iii) more than 10% loss or dieback of roots, branches and foliage,
- iv) mechanical damage or bruising of bark and timber of roots, trunk and branches,

- v) yellowing of foliage or a thinning of the canopy untypical of its species,
- vi) an increase in the amount of deadwood not associated with normal growth,
- vii) an increase in kino or gum exudation,
- viii) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
- ix) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of trees.

20. **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.

21. **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.

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. Waste Management During Development

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

26. Geotechnical Issues

All conditions outlined in the Geotechnical Report prepared by White Geotechnical Group dated October 2022 are to be complied with and adhered to throughout development.

Reason: To ensure Excavation to the downhill side of this house, pool installation and other external and alterations are undertaken in an appropriate manner and structurally sound.

NOTE: The subject site is shown to be a Landslip Hazard - Area G2 on Councils 'Development on Sloping Sites' in Manly DCP 2013.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

27. Condition of Retained Vegetation

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist/Project Arborist with minimum AQF Level 5 qualifications in arboriculture shall be submitted to the Principal Certifier, assessing the health and impact on all existing trees required to be retained on the approved Plans or as listed in the Arboricultural Impact Assessment, including the following information:

- a) compliance to any Arborist recommendations for tree protection generally and during excavation works,
- b) extent of damage sustained by vegetation as a result of the construction works,
- c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree and vegetation protection.

28. Native Landscaping

Any new landscaping is to incorporate a minimum 80% locally native vegetation species as a proportion of the total number of plants. Locally native species are to be consistent with the relevant section of the Native Planting Guide available on Council's website.

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

Reason: To ensure compliance with the requirement to retain and protect native planting on the site.

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

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

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

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

30. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

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

31. **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.

32. **House / Building Number**

House/building number is to be affixed to the fence / letterbox 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

33. **Control of Domestic Dogs/Cats**

Domestic dogs and cats are to be kept from entering wildlife habitat areas at all times.

Dogs and cats are to be kept in an enclosed area and/or inside the dwelling, or on a leash such that they cannot enter areas of wildlife habitat, bushland or foreshore unrestrained, on the site or on surrounding properties or reserves.

Reason: To protect native wildlife and habitat.

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.



PROJECT
ALTERATIONS + ADDITIONS
1 OGILVY RD, CLONTARF, NSW 2093
LOT 11, SEC J, DP 2610

FOR HOLBROOK FAMILY

DRAWING TITLE
SITE PLAN + SITE ANALYSIS

PROJECT NO.
 2022

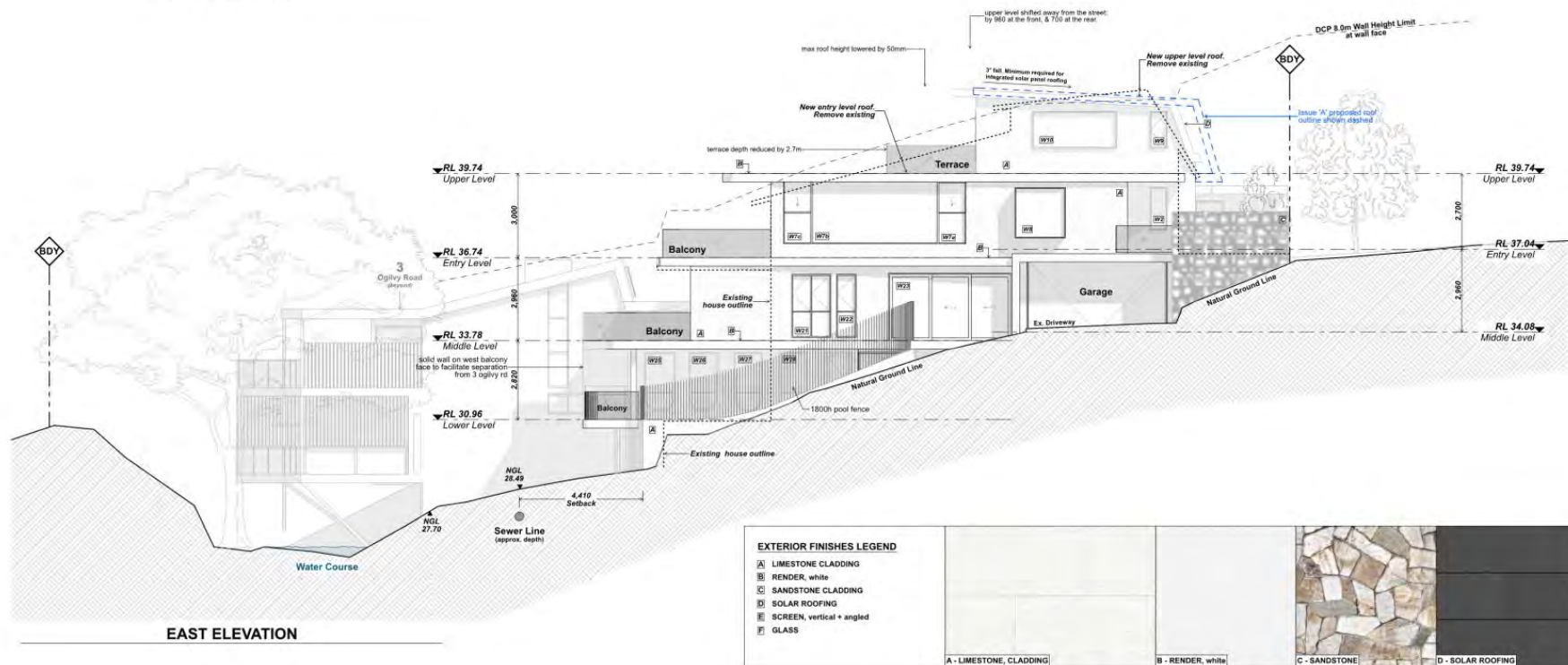
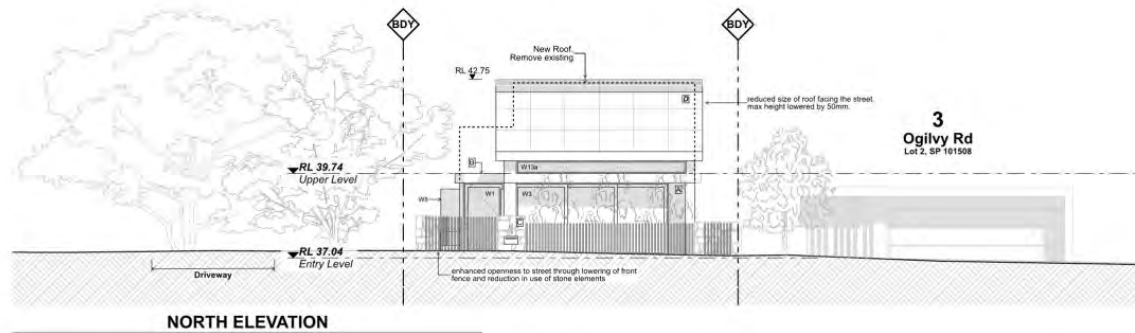
SCALE
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DRAWN BY
 ASHLEY BARKLE

DRAWING NO.
 A.01

PLOT DATE
 21/9/23

REVISION
 B

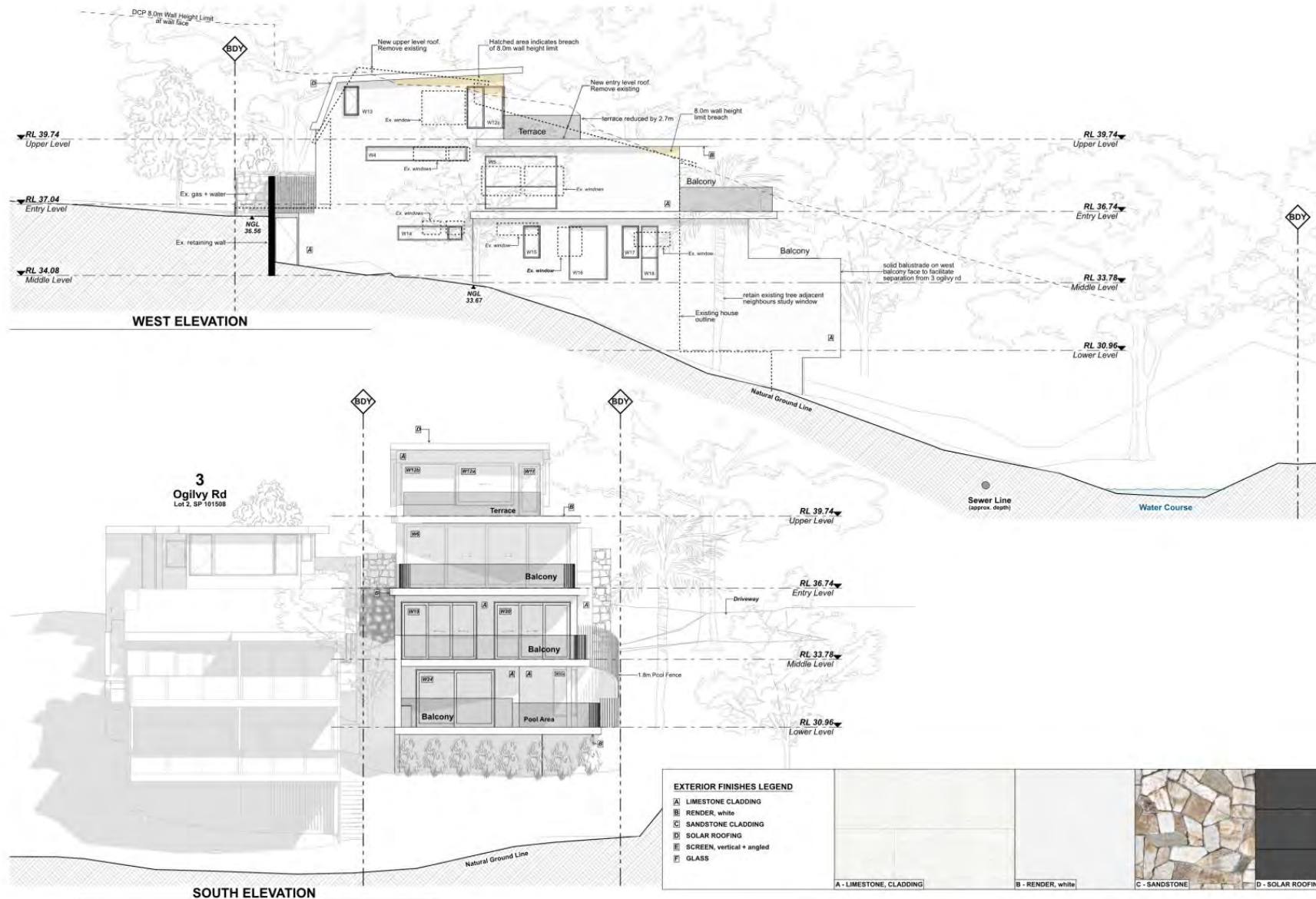


DATE	REV	DESCRIPTION
15/2/23	A	DA
21/9/23	B	DA - amendments

PROJECT
ALTERATIONS + ADDITIONS
1 OGILVY RD, CLONTARF, NSW 2093
LOT 11, SEC J, DP 2810
FOR HOLBROOK FAMILY

DRAWING TITLE
NORTH + EAST ELEVATIONS
PROJECT NO.
2022
SCALE
1:100 @ A2

DRAWN BY
ASHLEY BARKLE
DRAWING NO.
A.06
PLOT DATE
21/9/23
REVISION
B



DATE	REV	DESCRIPTION
15/2/23	A	DA
21/9/23	B	DA - amendments

PROJECT
ALTERATIONS + ADDITIONS
1 OGILVY RD, CLONTARF, NSW 2093
LOT 11, SEC J, DP 2810
FOR HOLBROOK FAMILY

DRAWING TITLE
SOUTH + WEST ELEVATIONS
PROJECT NO.
2022
SCALE
1:100 @ A2
DRAWN BY
ASHLEY BARKLE
DRAWING NO.
A.07

PLOT DATE
21/9/23
REVISION
B



*request to vary
a development standard*



REQUEST TO VARY A DEVELOPMENT STANDARD

1 OGILVY ROAD
CLONTARF NSW 2093

September 2023

Prepared by Rebecca Englund
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northern beaches planning

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introduction

This request to vary a development standard is made by Northern Beaches Planning on behalf of John Holbrook in relation to a development application for alterations and additions to an existing dwelling at 1 Ogilvy Road, Clontarf (**site**). This request is made pursuant to clause 4.6 of Manly Local Environmental Plan 2013 (**MLEP 2013**) and with regard to relevant case law.

standard to be varied

With a maximum height of 8.97m, the proposed development is non-compliant with the 8.5m maximum building height prescribed by clause 4.3 of MLEP 2013. The maximum building height prescribed by clause 4.3 of MLEP 2013 is a development standard, as defined by the Environmental Planning and Assessment Act (EP&A Act):

***development standards** means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of: ...*

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

Accordingly, the provisions of clause 4.6 of MLEP 2013 can be applied.

Pursuant to clause 4.6(2) of MLEP 2013, consent may be granted for development even though the proposal contravenes a development standard prescribed by an environmental planning instrument. Whilst this clause does not apply to those standards expressly excluded from this clause, the building height development standard of clause 4.3 of MLEP 2013 is not expressly excluded and thus, the provisions of clause 4.6 can be applied in this instance.

extent of the proposed breach

The proposed development comprises two elements that breach the 8.5m maximum building height plane, being:

- the proposed new ridgeline of the upper floor roof (RL 42.75m AHD), with a maximum height of 8.97m, representative of a 0.47m or 5% variation, and
- the proposed new roof over the entry level living room and balcony (RL39.74m AHD), with a maximum height of 8.98m, representative of a 0.48m or 5% variation.

The location and extent of variation is highlighted in the extract of Section A (**Figure 1**) by Ashley Barkle, below.

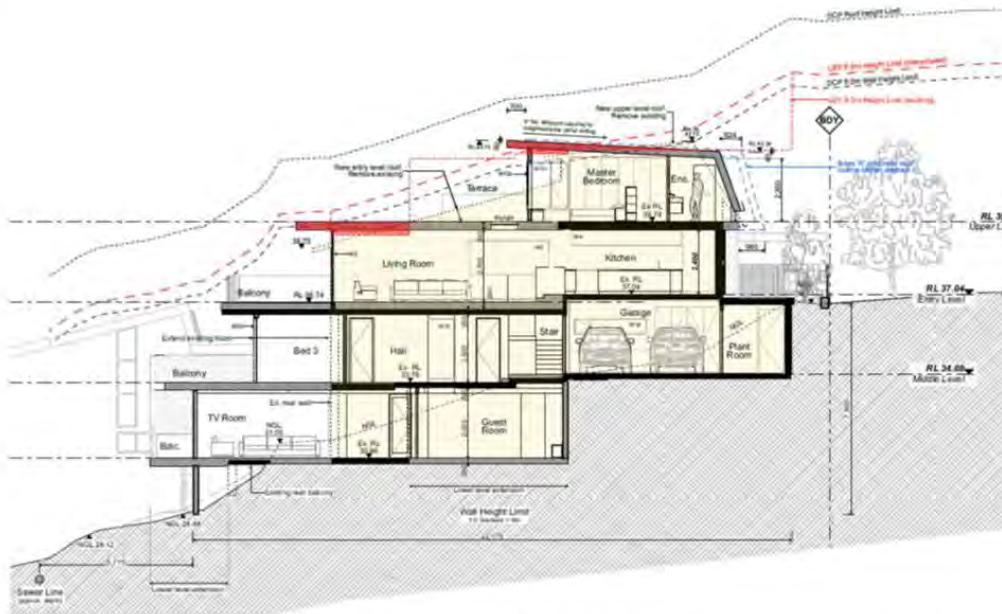


Figure 1 - Extract of Section A with height non-compliance highlighted in green
Source: Ashley Barkle

unreasonable or unnecessary

Pursuant to clause 4.6(4) of MLEP 2013, consent can only be granted if the consent authority is satisfied that the applicant's written request to vary the development standard has addressed the criteria of clause 4.6(3) of MLEP 2013. Clause 4.6(3)(a) of MLEP 2013 requires the applicant to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

In accordance with the decision of the NSW LEC in the matter of *Wehbe v Pittwater Council* [2007] NSWLEC 827, one way in which strict compliance with a development standard may be found to be unreasonable or unnecessary is if it can be demonstrated that the objectives of the standard are achieved, despite non-compliance with the development standard.

The proposed development is consistent with the objectives of the building height development standard, as prescribed by clause 4.4(1) of MLEP 2013, as follows:

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

Comment: The height and bulk of the dwelling remains generally the same as the existing dwelling, with the majority of the additional floor space proposed at the lower levels of the dwelling. The proposed development retains the two storey presentation to Ogilvy Road, and steps down in response to the fall of the land, with no more than 3 storeys in any one place, consistent with the height and scale of surrounding and nearby dwelling houses.

Whilst the resultant two storey presentation to Ogilvy Road is inconsistent with the single storey presentation of other dwellings along the low side of Ogilvy Road, the proposal is appropriately characterised as alterations and additions to the existing dwelling, which already has a two storey presentation to Ogilvy Road. The proposed alterations and additions result in a reduction to the height of the existing dwelling at the street frontage, from RL 42.73m AHD to RL 42.34m AHD, with a significant improvement to the visual appearance of the dwelling as seen from the street.

2. *to control the bulk and scale of buildings,*

Comment: The gross floor area of the dwelling is consistent with the variation prescribed by MDCP 2013 for undersized allotments, which has been consistently applied in relation to properties on the low side of Ogilvy Road. The proposed development is entirely consistent with the floor space ratio and general bulk and scale of dwellings to the west of the site, along the low side of Ogilvy Road.

The proposed additions have been sensitively designed and are generally maintained within the footprint of the existing dwelling to ensure the safe retention of existing trees and to maintain the landscaped character of the site. The proposed distribution of floor space also minimises site disturbance and ensures that the more sensitive areas of the site remain free of development. Further, the majority of additional floor space proposed is located at the lower levels of the development, where it will not be readily perceived from the public domain and where it is in the same alignment as neighbouring dwellings.

The design of the upper floor has been amended in response to feedback from Council, with the existing front setback retained and a reduction to the height and apparent size of the roof form. In general, the proposed alterations and additions will significantly improve the visual appearance of the dwelling and reduce the apparent size of the dwelling as seen from Ogilvy Road.

3. *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: Properties on the high side of Ogilvy Road enjoy views of Middle Harbour, Balmoral Beach and the city skyline beyond in a south-easterly direction over the properties on the low side of Ogilvy Road, including the subject site. The proposed development has

been sensitively designed to minimise any potential impact upon these views, with only a minor increase to the height and southern extent of the upper floor to ensure that views over the current roof are preserved.

As evident in real estate images obtained in relation to upslope properties (Figures 2-4), the pre-existing street tree currently screened the existing dwelling from view from most vantage points at 8A and 10 Ogilvy Road, and any impact associated with the additional height proposed is likely to be limited to foreground vegetation, if visible at all.



Figure 2 - View from main from deck at 10 Ogilvy Road, with existing dwelling at the site screened from view
Source: realestate.com.au



Figure 3 - View from living room at 10 Ogilvy Road, with existing dwelling at the site screened from view
Source: Realestate.com.au



Figure 4 - View from living room at 8A Ogilvy Road, with existing dwelling at the site screened from view
Source: Realestate.com.au



Figure 5 – View from front upper floor balcony at 6 Ogilvy Road with wireframe of proposed roof form overlaid atop.

Source: Northern Beaches Council and Ashley Barkle

A submission was also received from the property owners of 6 Ogilvy Road, raising concerns in regard to the potential impact upon views from the front, upper floor balcony of their property. Figure 5 demonstrates the view in question, with the roof of the existing dwelling visible at the bottom of the image. The minor alteration proposed to this roof is considered to have a negligible impact upon this view, with the minor loss of filtered water views associated with the slight increase to the length and height of the roof at the southern elevation somewhat offset by the reduction to the height of the roof at the existing ridgeline.

Visually, the proposed roof will also be less visually apparent, with the existing light coloured tiles to be replaced by dark coloured tiles that are more in keeping with the natural environment.

The proposed development does not result in any unreasonable impacts upon views to important landscape or townscape features and the proposed non-compliance does not result in inconsistency with this objective.

4. *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 application is supported by Shadow Diagrams by Ashley Barkle that demonstrate that the proposed development will not-

- eliminate more than 1/3 of existing sunlight to the rear yard of the adjoining property at 3 Ogilvy Road between 9am and 3pm in midwinter, noting that additional overshadowing is limited to that at 9am, when the adjoining dwelling at 3 Ogilvy Road self-shadows its own areas of private open space, or
- Reduce the level of solar access to living room windows at 3 Ogilvy Road between 9am and 3pm, noting that the living room windows are located on the western side of the dwelling.

Non-compliance with the maximum height development standard does not result in any adverse impacts upon adjoining properties with regard to solar access, and compliance with the solar access provisions of clause 3.4.1.2 is achieved.

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

Comment: The proposed height non-compliances do not result in any adverse impacts upon trees, and do not erode the stepping of the built form as it relates to the slope of the land. The proposed additions have been sensitively designed and are generally maintained within the footprint of the existing dwelling to ensure the safe retention of existing trees and to maintain the landscaped character of the site. The proposed distribution of floor space also minimises site disturbance and ensures that the more sensitive areas of the site remain free of development.

As such, strict compliance with the building height development standard is unreasonable and unnecessary in the circumstances of this case.

sufficient environmental planning grounds

Clause 4.6(3)(b) of MLEP 2013 requires the applicant to demonstrate that there are sufficient environmental planning grounds to justify contravention of the standard. The specific environmental planning grounds to justify the proposed contravention of the building height development standard are as follows:

1. Historical excavation

The maximum height breach, being the breach associated with the upper floor balustrade, is situated over the excavated footprint of the existing dwelling. In accordance with the findings of the NSW LEC in *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582, the prior excavation of the site within the footprint of the existing building, which distorts the height of buildings development standard plane overlaid above the site when compared to the topography of the land, can properly be described as an environmental planning ground within the meaning of clause 4.6(3)(b) of MLEP 2013.

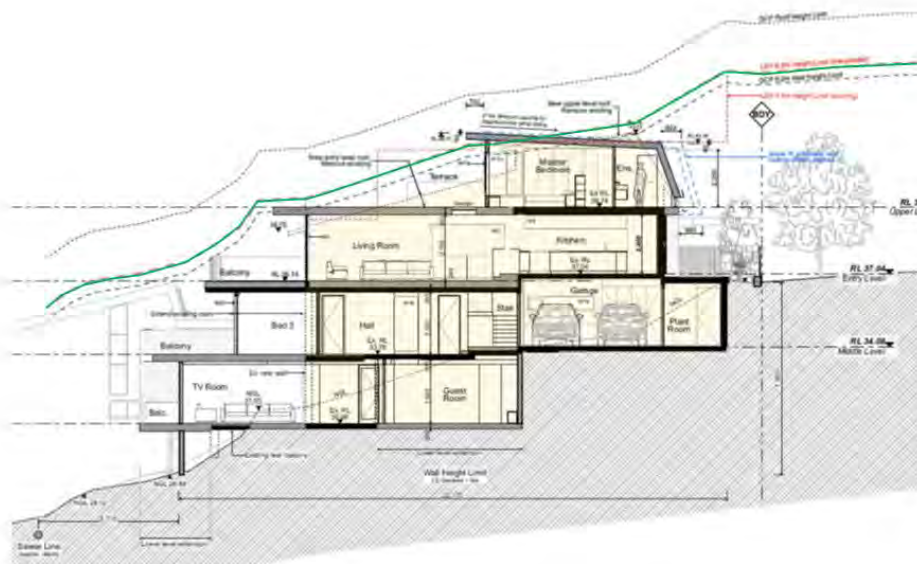


Figure 6 – Extract of Section A with height plane based on the assumed natural ground line highlighted in green
Source: Ashley Barkle

As demonstrated in Figure 6, the altered roof form over the living room and rear balcony on the entry level is maintained below the 8.5m maximum height plane when measured to assumed natural ground levels, excluding existing excavation.

2. Characterisation of development

The proposed development is appropriately characterised as alterations and additions to the existing dwelling, with the height breach at the upper floor occurring as a consequence of the desire to change the pitch of the roof of the upper floor. The proposed change to the upper floor roof has many positive benefits, including:

- The altered roof pitch maximises the area of the roof oriented to the north, which in turn maximises the functionality and efficiency of the proposed integrated solar panel roofing, achieving a more sustainable development outcome,
- The altered roof pitch maximises ceiling heights in the habitable area of the existing upper floor, where ceiling heights are currently less than the minimum prescribed by the BCA/NCC, improving the amenity of the space for occupants of the dwelling,
- The altered roof pitch results in a reduction to the height of the dwelling at the street frontage,
- The amended design of the upper floor roof results in a reduction to the apparent size of the roof and an improved appearance as seen from the street, and
- The altered roof pitch maximises exposure to available views and indirect light to the south, whilst the proposed eave provides weather protection, further enhancing internal amenity.

It is noted that the extent of non-compliance associated with the upper floor roof has increased as a result of the amended plans. However, this was discussed with the Assessing Officer prior to lodgement of the amended plans, who ultimately agreed that the breach in this particular location was not of concern, and the minor increase was preferable to ensure that an appropriate streetscape outcome was achieved.

The proposed change to the roof over the living room and rear balcony on the Entry Level also has many positive benefits, including:

- More appropriate ceiling heights in the primary living space, consistent with contemporary standards for living spaces,
- Reduction in bulk and scale as a consequence of the removal of the current pitched roof and attic storage space, and
- Enhanced amenity and obtainment of available views.

Overall, Council can be satisfied that the impacts associated with the proposed height breaches are appropriately minimised, noting that:

- the proposed maximum RL of the upper floor roof (RL 42.75m AHD) is an increase of only 2cm compared to the maximum RL of the existing roof (RL 42.73m AHD),
- the maximum increase to the height of the upper floor roof is limited to 600mm along the southern eave line,
- the breach associated with the new roof over the Entry Level living room arises as a consequence of pre-existing excavation that is not reflective of the natural topography of the land, and
- the non-compliant elements do not result in any adverse impacts upon the amenity of adjoining properties with regard to views, solar access or privacy.

Note: In response to concerns raised by objectors in relation to the size of the upper floor terrace, the depth of the terrace has been reduced and the terrace is wholly maintained below the height limit.

The proposed development is of superior architectural quality and promotes good design and amenity of the built environment, and the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants, consistent with objects (g) and (h) of the EP&A Act.

Upholding a variation that arises due to historical excavation also promotes the orderly and economic development of the land, consistent with object (c) of the EP&A Act.

Overall, there are sufficient environmental planning grounds to justify contravention of the floor space ratio development standard in this particular instance.

public interest

Under the provisions of clause 4.6(4)(a) of MLEP 2013, consent must not be granted to a proposal that contravenes a development standard unless the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for the zone in which the development is to be carried out.

As identified above, the proposed development is consistent with the objectives of the building height development standard. Furthermore, the proposal is consistent with the objectives of the C3 Environmental Management zone, as follows:

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

Comment: The proposed additions are generally retained within the footprint of the existing dwelling and have been designed to protect the more sensitive areas of the site, specifically the southern undisturbed portion of the site that contains significant canopy trees and a watercourse.

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

Comment: Dwelling houses are permissible and anticipated within the C3 zone.

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

Comment: The proposed development does not result in any adverse impacts upon significant trees, with the dominant canopy to the south and east retained. The perceived bulk and scale of the dwelling remains generally the same, with a significant improvement to the streetscape presentation of the dwelling. The proposal will result in a low impact residential development, that is not visually dominant as seen from the foreshore or the streetscape.

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

Comment: The proposed development is supported by an Arborist Report, a Bushfire Management Report and a Geotechnical Report that confirm that the proposed development has been designed and is to be constructed to minimise impacts on the surrounding natural environment.

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

Comment: The subject site is not located immediately adjacent to the foreshore. Nonetheless, the application is supported by Water Management Plans consistent with Council's Water

Management Policy. Soft surfaces on the site have been maximised, with landscaped areas far exceeding the minimum area prescribed by MDCP 2013.

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

Comment: The height and bulk of the dwelling remains largely unchanged, with only minor additions proposed at each level. The resultant development steps down the slope of the land and is of a scale that is consistent and compatible with surrounding dwellings. The development is generally maintained within the footprint of the existing dwelling and has been designed to minimise site disturbance across the site.

Council can be satisfied that the proposal is in the public's interest, in so far as it is consistent with both the objectives of the zone and the objectives of the floor space ratio development standard.

concurrence

Pursuant to clause 4.6(4) of MLEP 2013, development consent must not be granted to a development that contravenes a development standard unless the concurrence of the Secretary has been obtained. In accordance with the *Variations to Development Standards* Planning Circular issued by the Department of Planning, Industry and Investment on 5 May 2020, the Secretary's concurrence may be assumed as the proposed variation involves a numerical standard, and the extent of variation is less than 10%.

As such, the Secretary's concurrence can be assumed by Council staff in this instance.

conclusion

Overall, the consent authority can be satisfied that this written request has adequately addressed all relevant matters and that the provisions of clause 4.6 of MLEP 2013 have been met. As such, there is no jurisdictional impediment to the granting of consent in relation to the proposed breach of the building height development standard.



Rebecca Englund
B Arch Studies | M Plan | MPIA

Director | Northern Beaches Planning

northern beaches planning

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*request to vary
a development standard*



REQUEST TO VARY A DEVELOPMENT STANDARD

1 OGILVY ROAD
CLONTARF NSW 2093

September 2023

Prepared by Rebecca Englund
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northern beaches planning

introduction

This request to vary a development standard is made by Northern Beaches Planning on behalf of John Holbrook in relation to a development application for alterations and additions to an existing dwelling at 1 Ogilvy Road, Clontarf (**site**). This request is made pursuant to clause 4.6 of Manly Local Environmental Plan 2013 (**MLEP 2013**) and with regard to relevant case law.

standard to be varied

Clause 4.4 of MLEP 2013 limits the floor space ratio of development on a site in accordance with that nominated on the Floor Space Ratio Map of MLEP 2013. With respect to the subject site, the floor space ratio is 0.4:1.

In accordance with clause 4.5 of MLEP 2013, the floor space ratio of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area. The proposed development has a gross floor area of 275.38m² and a floor space ratio of 0.58:1, resulting in inconsistency with this control.

The floor space ratio prescribed by clause 4.4 of MLEP 2013 is a development standard, as defined by the Environmental Planning and Assessment Act (EP&A Act):

***development standards** means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of: ...*

(d) the cubic content or floor space of a building...

Accordingly, the provisions of clause 4.6 of MLEP 2013 can be applied.

Pursuant to clause 4.6(2) of MLEP 2013, consent may be granted for development even though the proposal contravenes a development standard prescribed by an environmental planning instrument. Whilst this clause does not apply to those standards expressly excluded from this clause, the floor space ratio development standard of clause 4.4 of MLEP 2013 is not expressly excluded and thus, the provisions of clause 4.6 can be applied in this instance.

extent of the proposed breach

The proposed development has a gross floor area of 275.38m² and a floor space ratio of 0.58:1, representative of an 86.34m² or 46% variation to the 0.4:1 maximum floor space ratio prescribed.

unreasonable or unnecessary

Pursuant to clause 4.6(4) of MLEP 2013, consent can only be granted if the consent authority is satisfied that the applicant's written request to vary the development standard has addressed the criteria of clause 4.6(3) of MLEP 2013. Clause 4.6(3)(a) of MLEP 2013 requires the applicant to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

In accordance with the decision of the NSW LEC in the matter of *Wehbe v Pittwater Council* [2007] NSWLEC 827, one way in which strict compliance with a development standard may be found to be unreasonable or unnecessary is if it can be demonstrated that the objectives of the standard are achieved, despite non-compliance with the development standard.

The proposed development is consistent with the objectives of the floor space ratio development standard, as prescribed by clause 4.4(1) of MLEP 2013, as follows:

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

Comment: The proposed development is highly articulated and will sit comfortably within the existing streetscape setting. The proposed development is appropriately responsive to the prescribed built form controls and is generally maintained below the 8.5m maximum height plane. The resultant development maintains a two storey presentation to Ogilvy Road, with a bulk and scale that is generally consistent with that of the existing dwelling, as shown in the Northern Elevation by Ashley Barkle (Figure 1).

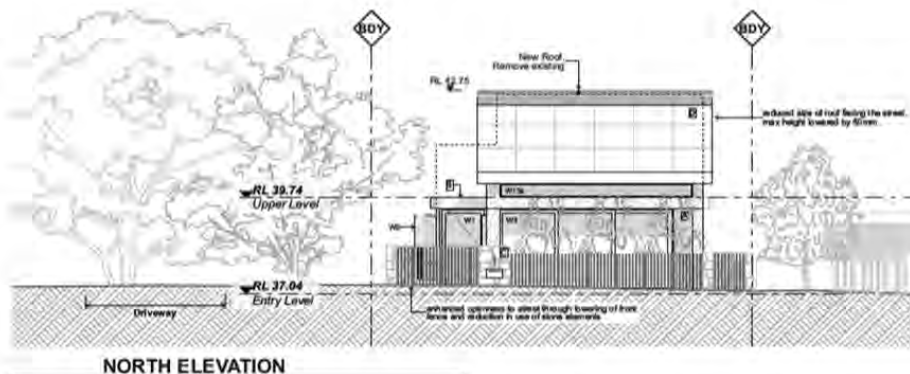


Figure 1 – Extract of North Elevation
Source: Ashley Barkle

The proposed floor space ratio non-compliance does not result in a development that is inconsistent with the bulk and scale of the existing and desired character of Ogilvy Road.

- (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: Properties on the high side of Ogilvy Road enjoy views of Middle Harbour, Balmoral Beach and the city skyline beyond in a south-easterly direction over the properties on the low side of Ogilvy Road, including the subject site. The proposed development has been sensitively designed to minimise any potential impact upon these views, with only a minor increase to the height and southern extent of the upper floor to ensure that views over the current roof are preserved.

As evident in real estate images obtained in relation to upslope properties (Figures 2-4), the existing Cupressus street tree currently screens the existing dwelling from view from most vantage points, and any impact associated with the additional height proposed is likely to be limited to foreground vegetation, if visible at all.

The proposed development does not obstruct any important landscape or townscape features. The proposed non-compliance does not result in inconsistency with this objective.



Figure 2 - View from main front deck at 10 Ogilvy Road, with existing dwelling at the site screened from view
Source: Realestate.com.au



Figure 3 - View from living room at 10 Ogilvy Road, with existing dwelling at the site screened from view
Source: Realestate.com.au



Figure 4 - View from living room at 8A Ogilvy Road, with existing dwelling at the site screened from view
Source: Realestate.com.au

A submission was also received from the property owners of 6 Ogilvy Road, raising concerns in regard to the potential impact upon views from the front, upper floor balcony of their property. Figure 5 demonstrates the view in question, with the roof of the existing dwelling visible at the bottom of the image. The minor alteration proposed to this roof is considered to have a negligible impact upon this view, with the minor loss of filtered water views



Figure 6 – 3D Perspective of the proposed development in its streetscape context
Source: Ashley Barkle

As demonstrated in the 3D perspective image in Figure 6, the proposed development will achieve an appropriate visual relationship with the character of the streetscape and the proposed floor space ratio non-compliance does not detract from consistency with this objective.

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

Comment: The proposed development has been skilfully designed to maximise amenity for future occupants of the dwelling whilst minimising impact upon the amenity of neighbouring dwellings.

The dwelling has been designed with minimal openings along the upper floor side elevations to minimise opportunity for overlooking between properties, with privacy screens and plantings proposed where necessary for additional amelioration.

The project architect has undertaken detailed solar access analysis to demonstrate that overshadowing of the neighbouring dwelling to the west is appropriately minimised.

As discussed with regard to Objective (b) above, the proposed development does not result in any adverse impacts upon views.

Further, as discussed with regard to Objective (a), the proposal will not result in any adverse impacts on the streetscape. Consistent with the findings of Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191, the bulk and scale of the proposed development will not be offensive, jarring or unsympathetic as seen from the casual observer in the Ogilvy Road streetscape, particularly in circumstances where the bulk and scale of the development is not radically altered compared to that of the existing dwelling.

The proposed floor space ratio non-compliance does not detract from consistency with this objective.

- (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 – the application relates to land in a residential zone.

As such, strict compliance with the floor space ratio development standard is unreasonable and unnecessary in the circumstances of this case.

sufficient environmental planning grounds

Clause 4.6(3)(b) of MLEP 2013 requires the applicant to demonstrate that there are sufficient environmental planning grounds to justify contravention of the standard. The specific environmental planning grounds to justify the proposed contravention of the floor space ratio standard are as follows:

1. Undersized Lot

The subject site is an undersized lot, with a total area of 472.6m²; less than half of the 950m² minimum lot size prescribed by clause 4.1 of MLEP 2013. Clause 4.1.3.1 of MDCP 2013 provides that the undersized nature of a lot is a matter that Council may consider in determining whether 'compliance with the standard is unreasonable or unnecessary in the circumstances of the case' and 'there is sufficient environmental planning grounds to justify contravening the development standard under clause 4.6(3) of MLEP 2013.

The DCP provides that the extent of any exception to the LEP FSR development standard is to be no greater than the achievable FSR for the lot size indicated in Figure 30 – Extract of FSR Variation for Undersized Lots, being a FSR calculation based on 750m² lot size/site area.

With a FSR of 0.37:1 based on a lot size of 750m², the proposed is 24.62m² less than the maximum floor space ratio prescribed by MDCP 2013 for the undersized lot.

2. Consistent application of variation

Properties on the low side of Ogilvy Road are similarly sized, with the same 0.4:1 FSR development standard. The following development consents have been issued with respect to land on the low side of Ogilvy Road:

- DA0203/2013 granted consent to alterations and additions to the existing dwelling at 3 Ogilvy Road, with a gross floor area 288.31m² and a FSR of 0.61:1.
- DA0032/2012 granted consent to alterations and additions to the existing dwelling at 5 Ogilvy Road, with a gross floor area of 319.3m² and a FSR of 0.675:1.
- DA0332/2016 granted consent to alterations and additions to the existing dwelling at 7 Ogilvy Road, with a gross floor area of 239.7m² and a FSR of 0.5:1.

- DA0298/2015 granted consent to alterations and additions to the existing dwelling at 11 Ogilvy Road, with a gross floor area of 271m² and a FSR of 0.57:1.
- DA0277/2015 granted consent to alterations and additions to the existing dwelling at 13 Ogilvy Road, with a gross floor area of 199.3m² and a FSR of 0.423:1.

Council has consistently applied the undersized lot variation of clause 4.1.3.1 of MDCP 2013 along the low side of Ogilvy Road, which has eroded the 0.4:1 floor space ratio in this specific streetscape context and in turn has established a character of larger houses on smaller lots.

The proposed development is of superior architectural quality and promotes good design and amenity of the built environment, and the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants, consistent with objects (g) and (h) of the EP&A Act.

The application of an expressed variation of MDCP 2013 which has been consistently applied in the streetscape also promotes the orderly and economic development of the land, consistent with object (c) of the EP&A Act.

Overall, there are sufficient environmental planning grounds to justify contravention of the floor space ratio development standard in this particular instance.

public interest

Under the provisions of clause 4.6(4)(a) of MLEP 2013, consent must not be granted to a proposal that contravenes a development standard unless the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for the zone in which the development is to be carried out.

As identified above, the proposed development is consistent with the objectives of the floor space ratio development standard. Furthermore, the proposal is consistent with the objectives of the C3 Environmental Management zone, as follows:

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

Comment: The proposed additions are generally retained within the footprint of the existing dwelling and have been designed to protect the more sensitive areas of the site, specifically the southern undisturbed portion of the site that contains significant canopy trees and a watercourse.

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

Comment: Dwelling houses are permissible and anticipated within the C3 zone.

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

Comment: The proposed development does not result in any adverse impacts upon significant trees, with the dominant canopy to the south and east retained. The perceived bulk and scale of the dwelling remains generally the same, with a significant improvement to the streetscape presentation of the dwelling. The proposal will result in a low impact residential development, that is not visually dominant as seen from the foreshore or the streetscape.

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

Comment: The proposed development is supported by an Arborist Report, a Bushfire Management Report and a Geotechnical Report that confirm that the proposed development has been designed and is to be constructed to minimise impacts on the surrounding natural environment.

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

Comment: The subject site is not located immediately adjacent to the foreshore. Nonetheless, the application is supported by Water Management Plans consistent with Council's Water Management Policy. Soft surfaces on the site have been maximised, with landscaped areas far exceeding the minimum area prescribed by MDCP 2013.

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

Comment: The height and bulk of the dwelling remains largely unchanged, with only minor additions proposed at each level. The resultant development steps down the slope of the land and is of a scale that is consistent and compatible with surrounding dwellings. The development is generally maintained within the footprint of the existing dwelling and has been designed to minimise site disturbance across the site.

Council can be satisfied that the proposal is in the public's interest, in so far as it is consistent with both the objectives of the zone and the objectives of the floor space ratio development standard.

concurrence

Pursuant to clause 4.6(4) of MLEP 2013, development consent must not be granted to a development that contravenes a development standard unless the concurrence of the Secretary has been obtained. In accordance with Council's DDP Charter (in response to advice received from the Department of Planning, Industry and Environment, dated 2 November 2021), applications for Class 1 buildings with a variation greater than 10% to the floor space ratio development standard within MLEP 2013 may be determined by the DDP.

As such, the Secretary's concurrence can be assumed by the DDP in this instance.

conclusion

Overall, the consent authority can be satisfied that this written request has adequately addressed all relevant matters and that the provisions of clause 4.6 of MLEP 2013 have been met. As such, there is no jurisdictional impediment to the granting of consent in relation to the proposed breach of the floor space ratio development standard.



Rebecca Englund

B Arch Studies | M Plan | MPIA

Director | Northern Beaches Planning

ITEM 3.5 **DA2023/0870 - 159A SEAFORTH CRESCENT SEAFORTH -
DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING
HOUSE INCLUDING SWIMMING POOL**

REPORTING MANAGER Adam Richardson

TRIM FILE REF 2023/802992

ATTACHMENTS 1 [↓](#) Assessment Report
 2 [↓](#) Site Plan and Elevations
 3 [↓](#) Clause 4.6 - Height of Building
 4 [↓](#) Clause 4.6 - Floor Space Ratio

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 and 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 and 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 DA2023/0870 for Demolition works and construction of a dwelling house including swimming pool on land at Lot 1 DP 212783, 159 A Seaforth Crescent SEAFORTH, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0870
Responsible Officer:	Megan Surtees
Land to be developed (Address):	Lot 1 DP 212783, 159 A Seaforth Crescent SEAFORTH NSW 2092
Proposed Development:	Demolition works and construction of a dwelling house including swimming pool
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Stephen Macri
Applicant:	Robert Ursino Design Pty Ltd
Application Lodged:	11/07/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	14/11/2023 to 28/11/2023
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	4.3 Height of buildings: 10% 4.4 Floor space ratio: 10%
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,355,481.00

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) as the proposed development seeks to vary Clause 4.3 Height of Buildings and Clause 4.4 Floor Space Ratio within the Manly Local Environmental Plan 2013 (MLEP 2013) by 10% each.

During the notification periods, Council received 3 objections to the proposed development. Concerns

raised in the objections predominantly relate to 24 hour driveway access to shared driveway of 161, 161A, 161B and 161C Seaforth Crescent, the development is contrary to the aims of the MLEP 2013, it is contrary to the objectives of R2 Low Density Residential Zone of the MLEP 2013, it incorrectly establishes existing ground level, non-compliances to the relevant development standards in MLEP 2013, non-compliances to the relevant controls within the MDCP, excessive building mass, bulk and scale, view loss, privacy, overshadowing, engineering and stormwater issues, precedence, public interest, insufficient information, and no genuine attempt to address the issues raised in previous submissions.

Critical assessment issues included the Clause 4.6 Exceptions to development standards, acid sulfate soils, earthworks, stormwater management, terrestrial biodiversity, landslide risk, foreshore scenic protection area, limited development on foreshore area, essential services, streetscape (residential areas), sunlight access and overshadowing, privacy and security, maintenance of views, residential density and dwelling size, height of buildings, floor space ratio, setbacks and building separation, parking, vehicular access and loading, and parking rates and requirements for vehicles.

The written Clause 4.6 request for the non-compliance with height standard arises from the site being partially excavated underneath the existing building creating a 10% variation for a small section of the building, specifically relating to the roof form over the first floor level balcony. The remaining portion of the building is sited comfortably under the maximum 8.5 metre building height. Based on extrapolated natural ground levels, however, the maximum height would be 8.5 metres.

The written Clause 4.6 request for the non-compliance with FSR standard arises due to the site being an undersized allotment and is subject to a dispensation provision in the DCP. It is noted that the FSR does achieve compliance with the FSR variations permitted within Manly DCP for undersized allotments.

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

PROPOSED DEVELOPMENT IN DETAIL

This application seeks consent for the demolition of the exiting dwelling house and the construction of a two (2) and three (3) storey residential dwelling and swimming pool, comprising the following:

Internal

Lower Ground Level

- Guest / study room
- Bathroom
- Family room
- Laundry
- Kitchenette
- Storage room
- Lift and internal staircase to the upper levels

Ground Level

- Two (2) car garage
- Entry foyer
- Water closet
- Open plan kitchen (with separate pantry), dining and living room

- Cloak cupboard

First Level

- Bedroom 1 with walk-in robe and ensuite and access to balcony
- Bedrooms 2, 3 and 4 (with an en-suite for bedroom 4)
- Bathroom

External

Lower Ground Level

- Swimming pool
- BBQ area and pool deck
- External staircase along the south-western elevation of the dwelling
- Landscape planting

Ground Level

- Balcony located off the kitchen, dining and living room.

First Level

- Balcony located off Bedroom 1.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Local Environmental Plan 2013 - 6.1 Acid sulfate soils
 Manly Local Environmental Plan 2013 - 6.2 Earthworks
 Manly Local Environmental Plan 2013 - 6.4 Stormwater management
 Manly Local Environmental Plan 2013 - 6.5 Terrestrial biodiversity
 Manly Local Environmental Plan 2013 - 6.8 Landslide risk
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Local Environmental Plan 2013 - 6.10 Limited development on foreshore area
 Manly Local Environmental Plan 2013 - 6.12 Essential services
 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 - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 4.1.1.1 Residential Density and Dwelling Size
 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 - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
 Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)
 Manly Development Control Plan - 5.4.1 Foreshore Scenic Protection Area
 Manly Development Control Plan - Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles

SITE DESCRIPTION

Property Description:	Lot 1 DP 212783 , 159 A Seaforth Crescent SEAFORTH NSW 2092
Detailed Site Description:	The subject site consists of one (1) allotment located on the south-western side of Seaforth Crescent. The site is irregular in shape with a frontage to the north-eastern boundary of 34.3m along Seaforth Crescent and a depth of 34.26m. The site has a surveyed area of 677.5m². The site is located within the R2 Low Density Residential zone within the <i>Manly Local Environmental Plan 2013</i> (MLEP 2013) and accommodates a one (1) and two (2) storey residential dwelling within a landscaped setting. The site has a north-easterly orientation towards Seaforth Crescent, and is located on a slope of approximately 10.56 metres (or 32.4%), falling from the south-eastern portion of the site toward the south-western area. The site is not known to have any threatened species. Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by residential dwellings ranging in height from two (2) to three (3) storeys within a landscaped setting, some with swimming pools.

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.

APPLICATION HISTORY

30 June 2023

The Applicant uploaded the application to the NSW Planning Portal.

11 July 2023

Council accepted the application.

18 July 2023 to 1 August 2023

The application was notified to adjoining/nearby properties in accordance with Council's Community Participation Plan (CPP). Two (2) submissions, in objection to the proposal, were received.

28 August 2023

A preliminary assessment was undertaken where issues with the proposal were identified. A Request for Further Information (RFI) letter was prepared and sent to the Applicant via the NSW Planning Portal and e-mail.

5 September 2023

The Applicant requested a meeting with Council to discuss the issues detailed within the RFI letter.

12 September 2023

A meeting was held, via Microsoft Teams, on 12 September 2023. Attendees included the Applicant, the Applicant's Town Planner, and Council's Development Assessment Planner and Manager.

20 October 2023

The Applicant was advised, via email, that Council's Development Engineer provided comment (which was missed at the time of preparing the RFI letter) on the proposed development, which raised concern regarding the proposed stormwater management and on-site detention (OSD).

1 November 2023

The Applicant provided amended plans and documentation to Council via email. The Applicant was advised to upload this information to the NSW Planning Portal.

7 November 2023

The Applicant uploaded the amended plans and documentation to the NSW Planning Portal.

14 November 2023 to 28 November 2023

At Council's discretion, the amended plans and documentation were re-notified to adjoining and nearby properties.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Mainly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested

Section 4.15 Matters for Consideration	Comments
	in relation to planning concerns. These concerns were detailed within a Request for Further Information (RFI) letter dated 28 August 2023, which was sent to the Applicant via email and through the NSW Planning Portal. On 20 October 2023, the Applicant was advised of the comments provided by Council's Development Engineer. Amended documentation was provided to Council via e-mail on 1 November 2023, and uploaded to the NSW Planning Portal on 7 November 2023. The amended documentation was re-notified. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in 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 14/11/2023 to 28/11/2023 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 3 submission/s from:

Name:	Address:
Bill Tulloch	Po Box 440 MONA VALE NSW 1660
Ms Diana Emma Jefferson	161 Seaforth Crescent SEAFORTH NSW 2092
Mr David Oliver Davies	159 Seaforth Crescent SEAFORTH NSW 2092

This application was notified twice, following the receipt of amended plans. As such, during the first notification period (18 July 2023 to 1 August 2023) two (2) submissions were received - one on behalf of the owners of 159 Seaforth Crescent, and the other from the owner of 161 Seaforth Crescent.

During the second notification period (14 November 2023 - 28 November 2023) two (2) submissions were received. However, these submissions were prepared on behalf of, and by, the owners of 159 Seaforth Crescent.

In accordance with Council's Community Participation Plan, '*all submissions received by or on behalf of the same dwelling will be considered as a single submission*'. Therefore, the three (3) submissions received from or on behalf of 159 Seaforth Crescent will be treated as one (1) submission.

The following issues were raised in the submissions received during the first notification period:

- ***Continued 24 hour access to the shared driveway between 161, 161A, 161B and 161C Seaforth Crescent.***
- ***Contrary to the aims of the MLEP 2013***
- ***Contrary to the objectives of the R2 Low Density Residential zone of the MLEP 2013***
- ***Incorrect consideration of existing ground level***
- ***Non-compliances to relevant development standards within the MLEP 2013 and inadequate Clause 4.6s***
- ***Non-compliances to relevant controls within the MDCP (wall height, number of storeys, setbacks, landscaped open space, side boundary envelope and streetscape)***
- ***Building mass, bulk and scale***
- ***View loss***
- ***Privacy***
- ***Overshadowing***
- ***Engineering and stormwater concerns***
- ***Precedence***
- ***Public Interest***

- **Insufficient Information**
- **Request for amended plans**
- **Recommended Conditions of Consent**
- **Reasons for refusal**

The following issues were raised in the second notification period:

- **Height of building**
- **Visual bulk and scale impacts caused by non-compliant building height, FSR and setbacks**
- **District view loss caused by non-compliant building height, FSR and setbacks**
- **Solar access impacts caused by non-compliant building height, FSR and setbacks**
- **Landscape impacts to the structural root zone (SRZ) and tree protection zone (TPZ) for neighbouring trees and other landscaping issues**
- **Engineering impacts**
- **Requested amendments**
- **Precedence**
- **No genuine attempt to address the issues raised in previous submissions.**

Comment:

One (1) new issue was raised in submissions received during the second notification period. This issue has been addressed below.

The above issues are addressed as follows:

- **Continued 24 hour access to the shared driveway between 161, 161A, 161B and 161C Seaforth Crescent.**

The submissions raised concerns that during the construction of the proposed development, particularly the swimming pool and stone wall adjacent to the driveway, it would be difficult to maintain the continued 24 hours access to the shared driveway.

Comment:

A condition will be recommended to ensure the existing shared driveway remains in use for all sites benefitting from this driveway.

As conditioned, this issue does **not** warrant reason for refusal of this application.

- **Contrary to the aims of the MLEP 2013**

The submissions raised concerns that the proposed development is contrary to the aims of the MLEP 2013 as the proposal compromises amenity impacts upon neighbours, the development is not compatible with the desired future character of the locality in terms of building height and roof form, and the development does not minimise adverse effects of the bulk and scale of buildings.

Comment:

The proposed development has been assessed in accordance with the aims of the MLEP 2013. By virtue of the proposals performance against the relevant clauses of the MLEP 2013, the assessment has found that the proposed development meets the aims of the MLEP 2013.

This issue does **not** warrant reason for refusal of this application.

- **Contrary to the objectives of the R2 Low Density Residential zone of the MLEP 2013**

The submissions raised concerns that the proposed development is contrary to the objectives of the R2 Low Density Residential zone of the MLEP 2013 in that the proposed development comprises the following: amenity impacts upon neighbours, views, solar access, privacy and that the proposal does not minimise visual impact.

Comment:

The proposed development has been assessed against the objectives of the R2 Low Density Residential zone within this report. The assessment has found that the proposal meets these objectives.

This issue does **not** warrant reason for refusal of this application.

- **Incorrect consideration of existing ground level**

The submissions raised concerns that the proposed development has not accurately shown the existing ground levels in accordance with the definition of 'ground level (existing)' within the MLEP 2013 and the recent decisions made by the NSWLEC. Concern is raised that the surveyors spot levels were purposely excluded from the architectural plans to avoid showing the correct maximum building height. Of further concern is that the proposal relies upon the extrapolated ground levels, which is not consistent with how Council measures maximum building height, nor is it consistent with the NSWLEC's decision to not apply Bettar v Council of City of Sydney [2014] NSWLEC 1070.

Comment:

The submitted survey indicates the *existing* ground floor level is RL43.32. The *proposed* lower floor level is RL43.17, and the proposed terrace and BBQ area level is RL43.07. This indicates a degree of new excavation is proposed. Based on the definition of 'existing ground level' within the MLEP 2013 Dictionary, and in accordance with the judgement of *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582, the measurement of the height is done from the ridge to the existing ground level. The assessment has found that the proposed development breaches the maximum building height, with a variation of 10%. A detailed assessment of this non-compliance, and the accompanying Clause 4.6, has been undertaken within this assessment report. The assessment has found that the proposal is appropriate in its context, and does not result in any unreasonable amenity impacts upon adjoining properties.

This issue does **not** warrant reason for refusal of this application.

- **Non-compliances to relevant development standards within the MLEP 2013 and inadequate Clause 4.6s**

The submissions raised concerns that the proposed development results in numerical non-compliances to the maximum requirements of Clause 4.3 Height of Building and Clause 4.4

Floor Space Ratio as stipulated within the MLEP 2013. The submission notes that by virtue of the excessive height, the proposal is inconsistent with the desired character of the locality, incompatible with the height and scale of surrounding and nearby development, and results in unreasonable amenity impacts upon adjoining properties, view and solar access impacts, and unreasonable bulk and scale. The submission states that the Clause 4.6 request to vary Clause 4.3 is inadequate and not well-founded and, therefore, should not be upheld. Additionally, the submission notes that the proposed FSR is excessive with unreasonable amenity impacts upon adjoining properties, and that the Clause 4.6 for Clause 4.4 is not well-founded as it failed to consider urban design, land topography, surrounding building forms, articulation, and roof forms which shows a lack of understanding for the desired future character.

Comment:

The assessment of this application has found that the proposed development does not meet the numeric requirements stipulated within Clause 4.3 and Clause 4.4 of the MLEP 2013. Subsequently, two (2) Clause 4.6 documents accompany the proposal. A detailed assessment of these non-compliances, and the accompanying Clause 4.6 documents, have been undertaken within this assessment report. The assessment has found that the proposal is appropriate in its context, and does not result in any unreasonable amenity impacts upon adjoining properties.

This issue does **not** warrant reason for refusal of this application.

- **Non-compliances to relevant controls within the MDCP (wall height, number of storeys, setbacks, landscaped open space, side boundary envelope and streetscape)**

The submissions raised concerns that the proposal fails to comply with the numeric requirements and objectives of the maximum wall height and, by virtue of the proposed first floor, exceeds the maximum 2 storey allowance and, therefore, does not meet the outcomes of 4.1.2 of the MDCP. The submission also notes that the proposal provides insufficient landscaped areas and, therefore, does not meet the outcomes of 4.1.5 of the MDCP. Further, the submission notes, again, that by virtue of the proposed building mass, the proposal is visually dominant and, therefore, it does not meet the outcomes of 3.1.1 of the MDCP. It is also noted that the submission raises concern regarding the proposed development's impact upon SRZ and TPZ of neighbouring trees, specifically T1, T2, T15 and T16. The submission further contends that the proposal extends beyond the side boundary envelope.

Comment:

Detailed merit considerations have been undertaken within this assessment report for the relevant built form controls within the MDCP. The assessment of the proposal against these controls (both the numeric and outcome requirements) have found that the proposal is appropriate in its context and does not result in any unreasonable amenity impacts upon adjoining properties.

The proposed development achieves compliance with the requirements for total open space and landscaped open space as stipulated within the MDCP. Furthermore, Council's Landscape Officer has reviewed the proposed development, inclusive of the Arborist Report. Council's Landscape Officer is supportive of the proposal, subject to the recommendation of relevant conditions.

It is noted that the submission raises concern regarding a non-compliant side boundary

envelope. However, the MDCP does not include a side boundary envelope control. Therefore, this concern is not for consideration for this assessment within the Manly Local Government Area (LGA).

This issue does **not** warrant reason for refusal of this application.

- **Building mass, bulk and scale**

The submissions raised concerns that the proposal results in an unreasonable building mass, resulting in an excessive bulk and scale that adversely impacts upon the amenity of adjoining properties. The submission notes that as the proposal fails to comply with the development standards set out in the MLEP 2013, in conjunction with the multiple non-compliances arising from the first floor level, it results in an excessive building mass that causes unreasonable amenity impacts upon adjoining properties, including resulting in a visually dominant built form when viewed from public places. The submission notes that a redesign is required to improve the amenity of adjoining properties.

Comment:

Detailed merit considerations have been undertaken within this assessment report where the proposal does not result in numeric compliance with the relevant built form controls within the MLEP 2013 and MDCP. The assessment of this application has found that the proposal is appropriate in its context and does not result in any unreasonable amenity impacts upon adjoining properties.

This issue does **not** warrant reason for refusal of this application.

- **View loss**

*The submissions raised concerns that the proposed development will result in view loss, with the submission describing the extent of view loss as 'severe or devastating'. The submission also notes that height poles should be erected and certified by a registered surveyor. The submission further contends that the proposal has failed to provide a detailed view loss analysis and therefore, is, therefore, inconsistent with *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140.*

Comment:

A site visit was undertaken at 159 Seaforth Crescent, Seaforth, with the owners present, on 3 August 2023. An independent view loss assessment has been undertaken within this assessment report, in accordance with the four-part test outlined within *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140, which assesses views as a general principle; as well as a view loss assessment in accordance with *Rose Bay Marina Pty Limited v Woollahra Municipal Council and anor* [2013] NSWLEC 1046, which considers impact on public domain views. These assessments have found that the proposed development provides a reasonable and acceptable level of view sharing between properties.

This issue does **not** warrant reason for refusal of this application.

- **Privacy**

The submissions raised concerns that the proposed development will cause unreasonable visual privacy impacts to the adjoining property of 159 Seaforth Crescent, specifically direct

overlooking into the dwelling and private open space, resulting in an inconsistency with the provisions and objectives of the MDCP.

Comment:

A detailed merit assessment of the proposed development against the requirements of 3.4.2 of MDCP has been undertaken within this assessment report. This assessment found that the proposed development, subject to recommended conditions, will result in a reasonable level of privacy between properties.

This issue does **not** warrant reason for refusal of this application.

- **Overshadowing**

The submissions raised concerns that the proposed development results in unreasonable overshadowing to the adjoining property. The submission notes that the proposal does not provide adequate solar access diagrams at one hourly intervals, in plan and elevation form, as well as 'view from the sun' diagrams. The submission contends that this information is critical to the assessment of solar access to adjoining properties. The submission contends that the extension beyond the building envelope control, among other non-compliant MDCP controls, results in unreasonable overshadowing to the adjoining property at 159 Seaforth Crescent.

Comment:

The original set of plans provided included plan and elevational shadow diagrams at 9am, 12noon and 3pm on 21 June, which is in accordance with the lodgment requirements. Upon review of the proposed development, amended plans were provided which included updated shadow diagrams - both plan and elevational - at hourly intervals between 9am and 3pm on 21 June. A detailed assessment of the proposal against the requirements of 3.4.1 of the MDCP has been undertaken within this assessment report. The assessment has found that the proposal provides a reasonable level of solar access between properties.

As detailed above, the MDCP does not have a building envelope control to consider for development applications within the Manly LGA.

This issue does **not** warrant reason for refusal of this application.

- **Engineering and stormwater concerns**

The submissions raised concerns that the proposal includes excessive excavation (within proximity to 159 Seaforth Crescent), resulting in geotechnical concerns, such as the collapse of retaining walls, instability and failure of slope that continues into adjoining properties, excavation vibrations impacting upon structures of adjoining properties, and incomplete consideration of sediment and erosion fall, landslip hazards, and the extent of impact upon existing or proposed retaining walls. Further, the submission raises concern regarding the proposed stormwater design and OSD, requesting that Council ensure that there are stormwater pits to collect surface and sub-surface stormwater along the perimeter of the subject site.

Comment:

A Geotechnical Investigation Report (prepared by Geo-environmental Engineering, dated 15 May 2023) has been provided with this application (which has been included within the recommendation of this report). This report recommends that a dilapidation report be carried out on adjoining buildings prior to commencing excavation. As such, a condition has been recommended to ensure a pre and post dilapidation report is prepared for 159 Seaforth Crescent, Seaforth, as well as for the shared driveway (to the extent it meets the property boundaries) of 161, 161A, 161B and 161C Seaforth Crescent, Seaforth.

Amended plans were received, including stormwater management plans, to provide further detail on the proposed OSD. Council's Development Engineer has reviewed this proposed development, as amended, and they are satisfied the proposal provides sufficient OSD and stormwater management.

This issue does **not** warrant reason for refusal of this application.

- **Precedence**

The submissions suggested the proposal be refused because it would cause undesirable precedent for similar inappropriate development in the area.

Comment:

An approval to this development application does not guarantee approval of any future development applications as each development application is assessed on its own merits in accordance with the relevant Clauses within the MLEP 2013 and controls within the MDCP.

This issue does **not** warrant reason for refusal of this application.

- **Public Interest**

The submissions raised concerns that the proposal is not in the public interest because it is inconsistent with the scale and intensity of development that the community can reasonably expect to be provided on this site by nature of the applicable controls. The submission continues that the proposal does not represent orderly development of appropriate bulk, scale or amenity impact and that the approval of such a development would be prejudicial to local present and future amenity, as well as the desired future character and, therefore, is not in the public interest.

Comment:

While the proposal results in numerical non-compliances to relevant Clauses of the MLEP 2013 and controls within the MDCP, the assessment has found that the proposal is consistent with the outcomes of the relevant Clauses and controls, including the objectives of the R2 Low Density Residential zone and the aims of the MLEP 2013. By virtue of such consistency, the proposed development is considered to be in the public interest.

This issue does **not** warrant reason for refusal of this application.

- **Insufficient Information**

The submissions raised concerns that the proposal lacks sufficient detail to make an informed assessment, particularly with respect to determining the extent of the following issues and their relationship to adjoining properties: view impact analysis, solar access diagrams, privacy impact analysis, visual bulk analysis, existing and finished ground levels and geotechnical issues relating to the excavation works and their impacts upon adjoining properties. The submission also contends that the neighbouring dwellings are not shown on all plans.

Comment:

A view impact analysis has not been provided with this application. Council's Lodgment Requirements does not require such a document to be provided. Notwithstanding, an independent view loss assessment was undertaken as part of this assessment, which included a site visit to 159 Seaforth Crescent. This assessment can be found within this report under section 3.4.3. Maintenance of Views. This assessment found that the proposed development provides a reasonable sharing of views in accordance with the four-part test of *Tenacity Consulting v Warringah Council*. Solar access diagrams were provided to Council with the original master plans, and further updated to provide greater detail with hourly intervals on plans and elevational diagrams. The assessment found that the proposed development provides a reasonable level of solar access between properties. The proposed architectural plans included a height plane analysis (drawing no. A720 Rev B), which gives a visual 3D presentation of how the proposed development will be sited on the subject site, with the adjoining property at 159 Seaforth Crescent in the background. Furthermore, the proposal was accompanied by three (3) perspectives which, again, show how the proposed built form will be sited on the subject site. The proposal assessed against the requirements for height (both building height, wall height and roof height), FSR, setbacks, total open space and landscaped open space which all contribute to the resultant built form. The assessment found that the proposal results in an appropriate development that does not result in any unreasonable amenity impacts. The proposed plans show the existing ground and first floor levels (refer to drawing no. A201 Rev A) and the proposed finished floor levels (refer to the proposed floor plans, sections and elevations). The Geotechnical Investigation Report that accompanies this development application recommends dilapidation reports for adjoining properties. As such, relevant conditions have been recommended to ensure that a pre and post dilapidation report is prepared for 159 Seaforth Crescent, Seaforth, as well as the shared driveway for 161, 161A, 161B and 161D for the extent it meets the subject site boundaries. The existing dwelling at 159 Seaforth Crescent is shown on the architectural plans (refer to A201 Rev A, A202 Rev B, A203 Rev A, A502 Rev B, A504 Rev B, A602 Rev A, A720 Rev B, A721 Rev A, A802 Rev B, and Shadow Diagrams).

This issue does **not** warrant reason for refusal of this application.

- **Request for amended plans**

The submissions requested amended plans be provided that brings the proposal into a compliant scheme, specifically to reduce the built form, include privacy devices to the side elevations of the balconies and windows and more appropriate landscaping that doesn't impact upon the amenity of adjoining properties.

Comment:

Amended plans were provided which reduced the maximum building height and increased a portion of the first floor level to the south-western side setback so as to remove a continuous wall plane. The proposed development (on both the original and amended plans) include two (2) fixed privacy screens along the south-western elevation of the ground and first floor balconies, the window to the internal staircase has a fixed privacy screen for the full extent of the window, and the garage on the ground floor and the bathroom on the first floor level will utilise highlight windows with a finished floor level of 2.1 metres, thus providing a high level of privacy between properties. A condition has been recommended to address privacy concerns. No canopy trees are proposed within the south-western portion of the subject site, noting that the landscaping within the south-western area of the site will be small to medium shrubs and one (1) Frangipani tree. The proposed landscaping of the site is considered acceptable.

This issue does **not** warrant reason for refusal of this application.

- **Recommended Conditions of Consent**

The submissions requested a variety of conditions that must be included in any consent prior to the demolition of any building or construction, prior to the commencement of any development work, during any development work, prior to any occupation or use of the building, prior to the issue of the Occupation Certificate, during the ongoing use of the development, and to ensure neighbours are advised of certain works.

Comment:

Should this application be approved, the assessment of this development application will impose relevant standard and non-standard conditions that are suitable to the proposal and subject site.

This issue does **not** warrant reason for refusal of this application.

- **Reasons for refusal**

The submissions detailed 15 reasons for refusal: inconsistent with the Environmental Planning and Assessment Act 1979 ('the Act'), adverse amenity impacts upon adjoining properties, excessive excavation, inadequate Clause 4.6 documents, contrary to Section 4.15 of the Act.

Comment:

As detailed in the above responses, and throughout this assessment report, the proposal is reasonable in its context and is supportable, subject to recommended conditions.

This issue does **not** warrant reason for refusal of this application.

- **No genuine attempt to address the issues raised in previous submissions.**

The submissions raised concern that the amended application did not genuinely attempt to address concerns raised in the previous submissions. The Applicant has used their one (1) attempt to amend the application, and as the concerns were not addressed, the only option remaining is to refuse the application.

Comment:

The amended plans have been reviewed, which now form the basis of this assessment report. Where necessary, conditions have been recommended to further minimise amenity impacts upon adjoining properties. As detailed above, and throughout this report, the proposed development (notwithstanding the numeric non-compliances) is appropriate in the context of the subject site and does not result in any unreasonable amenity impacts upon adjoining properties, or the streetscape.

This issue does **not** warrant reason for refusal of this application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	Supported, subject to conditions. The proposal is supported with regard to landscape issues. <u>Additional Information Comment 15/11/23:</u> The amended plans are noted. The proposed tree planting is supported, no further comments are raised. <u>Original Comment 18 July 2023:</u> The Arboricultural Impact Assessment (AIA) identified 16 trees, of which trees 11, 13, and 14 are located within the property boundary and the remaining trees are outside the property boundary. All trees outside the property boundary must be retained and protected during works and Landscape Referral supports the tree protection recommendations outlined in the AIA, subject to the imposed conditions. Trees 11 and 14 are exempt by species and height respectively, thus can be removed or managed without consent. Tree 13 is prescribed and can be supported for removal, subject to replacement tree planting. As recommended in the AIA a Project Arborist shall be engaged to supervise all work in the tree protection zone of trees to be retained. The landscape proposal is generally supported and all proposed planting shall be installed in accordance with the requirements outlined in the conditions of consent. All on slab landscaping shall meet Council's minimum soil depth requirements. Landscape Referral supports Council's Bushland and Biodiversity comments regarding tree replacement, and to help satisfy MDCP 4.1.5.2 one additional native tree shall be installed within the property boundary, subject to the imposed conditions.
NECC (Bushland and Biodiversity)	Supported, subject to conditions. The proposal seeks approval for demolition works and construction of a dwelling house including swimming pool.

Internal Referral Body	Comments
	The comments in this referral relate to the following applicable controls and provisions: - SEPP (Resilience and Hazards) 2021 - Development within the coastal environment - Manly LEP - Clause 6.5 Terrestrial Biodiversity The proposal has been submitted with an Arboricultural impact assessment that has assessed the condition of a total of 16 trees and recommended the removal of a total of 3 trees (11, 13 and 14). Of these, only Tree 13 is prescribed. No objections are raised as to the removal of trees 11 and 14. Conditions will apply for the replacement of tree 13. In addition, a Landscape plan with a planting schedule has been submitted which is found to be compliant with applicable controls. The development is designed, sited and will be managed to avoid any significant adverse environmental impact.
NECC (Coast and Catchments)	Supported, subject to conditions. Whilst the property is located within the Coastal Environment & Use areas, the development is unlikely to impact on these attributes, subject to conditions.
NECC (Development Engineering)	Supported, subject to conditions. <u>Additional Information Comment 3 November 2023</u> Amended stormwater plans have satisfied Councils on-site detention requirements. A geotechnical report has been provided. Vehicle crossing construction is proposed. I have no further objections to the proposed development. <u>Original Comment 15 August 2023</u> The development site is in Region 3, Zone 1. 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 as per the requirements of Section 9.3.3.2 of the <i>Water Management for Development Policy Version 2, 26 February 2021</i>. Amend stormwater plans to show increased OSD storage and show orifice size. All impervious areas including driveway should be connected to the OSD system. Provide DRAINS model or alternate method used for sizing OSD basin and orifice.
External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	Supported, subject to conditions. The proposal was referred to Ausgrid who provided a response

External Referral Body	Comments
	stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	<i>Supported, subject to conditions.</i> Reference is made to the proposed development at the above area and Aboriginal heritage. No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development. Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1374806S_03, dated 28 October 2023).

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

Commitment	Required Target	Proposed
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Water	40	41
Thermal Comfort	Pass	Pass
Energy	50	51

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 (Biodiversity and Conservation) 2021

Chapter 6 – Water catchments

The subject property is located within the Sydney Harbour Catchment and Sydney Harbour Foreshores and Waterways Area therefore the provisions of Chapter 6 Water catchments of *State Environmental Planning Policy (Biodiversity and Conservation) 2021* apply to this development. Accordingly, an assessment under Chapter 6 has been carried out as follows:

Part 6.3 Foreshores and Waterways Area

Division 1 Preliminary

6.25 Consent authority

- (1) *The Minister administering the Ports and Maritime Administration Act 1995 is the consent authority for the following development—*
- (a) *development comprising the subdivision of land owned by TfNSW in or abutting the Foreshores and Waterways Area,*

- (b) development carried out in the Foreshores and Waterways Area wholly below the mean high water mark,
- (c) development carried out in the Foreshores and Waterways Area for one or more of the following purposes, including development carried out wholly or partly inside a local government area—Above-water boat lifts; Advertisements; Advertising structures; Aids to navigation; Aviation facilities; Boat lifts; Charter and tourism boating facilities; Commercial port facilities; Dredging; Floating boat platforms; Flora and fauna enclosures; Houseboats; Maintenance dredging; Mooring pens; Private landing facilities; Private landing steps; Private marinas; Private swimming enclosures; Public boardwalks; Public water transport facilities; Single moorings; Skids; Slipways
- (2) Despite subsection (1), the Minister administering the Environmental Planning and Assessment Act 1979 is the consent authority for the following development carried out in the Foreshores and Waterways Area—
- (a) development carried out partly above and partly below the mean high water mark,
- (b) development carried out below the mean high water mark for the purposes of one or more of the following—Boat building and repair facilities; Boat launching ramps; Boat sheds; Marinas; Reclamation works; Swimming pools; Water-based restaurants and entertainment facilities; Waterfront access stairs; Water recreation structures; Wharf or boating facilities that are sea walls
- (c) development carried out wholly or partly inside the zoned waterway, including development carried out below the mean high water mark, for the purposes of one or more of the following—Car parks; Commercial premises; Recreational or club facilities; Residential accommodation; Restaurants or cafes; Retail premises; Tourist facilities
- (3) Subsections (1) and (2) do not apply if another environmental planning instrument specifies a different public authority, other than the council, as the consent authority for the development.

Comment:

The proposed development seeks consent for demolition of all structures on site and the construction of a two (2) and three (3) storey residential dwelling, and therefore does not comprise any of the development types within subclause (1). Furthermore, the subject site to which the proposed development is located is not bound by a mean high water mark. As such, the consent authority is Northern Beaches Council.

Division 3 Development in Foreshores and Waterways Area

6.28 General

- (1) In deciding whether to grant development consent to development in the Foreshores and Waterways Area, the consent authority must consider the following—
- (a) whether the development is consistent with the following principles—
- (i) Sydney Harbour is a public resource, owned by the public, to be protected for the public good,
- (ii) the public good has precedence over the private good,
- (iii) the protection of the natural assets of Sydney Harbour has precedence over all other interests,
- (b) whether the development will promote the equitable use of the Foreshores and Waterways Area, including use by passive recreation craft,

- (c) whether the development will have an adverse impact on the Foreshores and Waterways Area, including on commercial and recreational uses of the Foreshores and Waterways Area,*
- (d) whether the development promotes water-dependent land uses over other land uses,*
- (e) whether the development will minimise risk to the development from rising sea levels or changing flood patterns as a result of climate change,*
- (f) whether the development will protect or reinstate natural intertidal foreshore areas, natural landforms and native vegetation,*
- (g) whether the development protects or enhances terrestrial and aquatic species, populations and ecological communities, including by avoiding physical damage to or shading of aquatic vegetation,*
- (h) whether the development will protect, maintain or rehabilitate watercourses, wetlands, riparian lands, remnant vegetation and ecological connectivity.*

Comment:

The subject site to which the proposed development is located is not a waterfront property to Sydney Harbour. Notwithstanding, the assessment of this application has considered the above prescribed matters. As the proposed development is sited entirely within the property boundaries of the subject site, the proposal will not have an adverse impact upon the functioning (both commercial and recreational), public use and public enjoyment of Sydney Harbour. Furthermore, as a mean high water mark is not applicable to the subject site, the proposal is unlikely to cause any unreasonable or adverse impacts upon the terrestrial and aquatic species, populations and ecological communities of Sydney Harbour, or alter natural watercourses, wetlands, riparian lands, remnant vegetation and ecological connectivity.

The proposal is considered to be consistent with the above requirements as prescribed within SEPP (Biodiversity and Conservation) 2021.

- (2) Development consent must not be granted to development in the Foreshores and Waterways Area unless the consent authority is satisfied of the following—*
 - (a) having regard to both current and future demand, the character and functions of a working harbour will be retained on foreshore sites,*
 - (b) if the development site adjoins land used for industrial or commercial maritime purposes—the development will be compatible with the use of the adjoining land,*
 - (c) if the development is for or in relation to industrial or commercial maritime purposes—public access that does not interfere with the purposes will be provided and maintained to and along the foreshore,*
 - (d) if the development site is on the foreshore—excessive traffic congestion will be minimised in the zoned waterway and along the foreshore,*
 - (e) the unique visual qualities of the Foreshores and Waterways Area and its islands, foreshores and tributaries will be enhanced, protected or maintained, including views and vistas to and from—*
 - (i) the Foreshores and Waterways Area, and*
 - (ii) public places, landmarks and heritage items.*

Comment:

The subject site is located within the Sydney Harbour Foreshores and Waterways Area. As such, the assessment of this application has considered the above and is satisfied the proposal can achieve these requirements, as follows. As the proposed development is sited entirely within the property boundaries, and is sited on private residential land, it is unlikely to impact upon the

character and functions of a working harbour. The subject site does not adjoin land used for industrial or commercial maritime purposes, and therefore the requirements relating to industrial and commercial maritime purposes are not for consideration under this development application. The subject site benefits from vehicular and pedestrian access from Seaforth Crescent. As such, constant reliance upon boat access to the subject site is not required. Therefore, the proposal does not affect maritime traffic congestion on the waterway. As detailed elsewhere in this report, the proposed development is commensurate with residential land uses adjoining and nearby to the subject site. In this instance, the foreshores and waterways area will be enhanced, protected and maintained.

The proposal is satisfactory when considered against the matters for consideration as prescribed within SEPP (Biodiversity and Conservation) 2021.

6.29 Areas of outstanding biodiversity value

- (2) *Development consent must not be granted to development on land to which this section applies unless the consent authority is satisfied the development will not have a significant adverse impact on the land.*

Comment:

The subject site is not considered to have outstanding biodiversity values.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

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

Comment:

The subject site is located within the coastal environment area. The matters as prescribed within the above Clause have been considered as part of this assessment. Council's Coast and Catchments Officer has reviewed the proposed development against the matters above, and no concerns were raised, subject to conditions.

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

Comment:

The proposed development has been considered against the matters prescribed within Clause 2. As detailed above, Council's Coast and Catchments Officer has reviewed the proposed development, noting there are no issues with the proposal, subject to recommended conditions.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

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

Comment:

The subject site is located within the coastal use area. The matters as prescribed within the above Clause have been considered as part of this assessment. Council's Coast and Catchments Officer has reviewed the proposed development against the matters above, and no concerns were raised, subject

to recommended conditions.

Division 5 General

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

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

Comment:

The proposed development is unlikely to increase the risk of coastal hazards.

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

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

Comment:

A certified coastal management program is not required for this subject site.

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

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.35m	10%	No
Floor Space Ratio	FSR: 0.4:1 (271.0m ²)	FSR: 0.44:1 (299.6m ²)	10%	No

Compliance Assessment

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

Detailed Assessment

4.6 Exceptions to development standards

Clause 4.3 Height of Buildings

Description of non-compliance:

Development standard:	Clause 4.3 Height of Buildings
Requirement:	8.5m
Proposed:	9.35m
Percentage variation to requirement:	10%

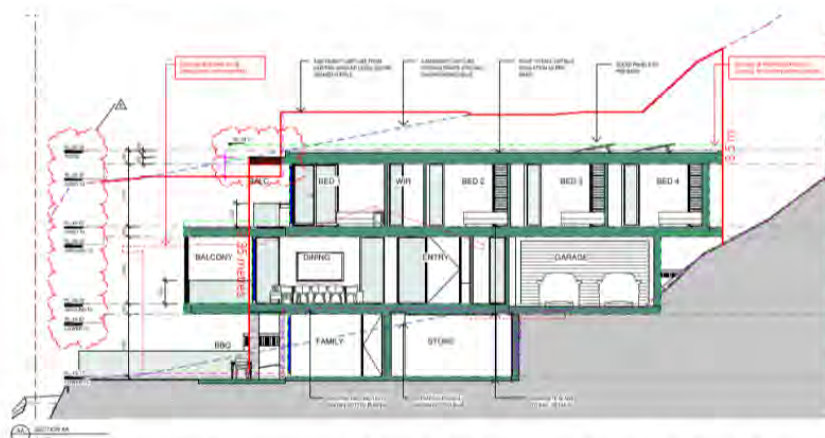


Figure 1. Proposed maximum building height encroachment. Extent of breach indicated in red shading.

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 proposal for a new two storey and part three storey dwelling house is consistent with this objective of the zone because it provides for the ongoing needs of the community for a new single dwelling house in this low-density residential zone.*
- *The height and bulk and scale of the building also has regard for the topography and the amenity of the adjoining dwelling houses.*
- *The proposal is consistent with the relevant environmental and planning objectives pertaining to the height standard and the R2 zone.*
- *Although the underlying objectives for the height standard are valid and relevant matters for consideration, it is contended that strict numerical compliance will not achieve any greater public benefit than the proposal and would thwart a better outcome to and from the development.*
- *The height breach is constrained to a small portion of the building at the area. As the non-compliance is caused by the sudden drop in topography on the site, it is not discernible feature of the building from the street front.*
- *The proposal involves the construction of a new low density residential dwelling house that will provide a well-designed contemporary dwelling which will upgrade the housing stock in the locality. The façade and setbacks are compatible with variety of architectural styles and character of other dwellings in the streetscape and will make a positives contribution to the future character of the locality.*
- *The majority of the built form will be compliant with the 8.5m height limit. The upper level of the proposed development maintains a consistency in the built form. The non-compliance roof is centrally located within the building footprint and therefore, results in negligible impacts with regard to streetscape character and overshadowing.*
- *The difference in the extent of impact between a development that achieves strict numerical compliance is negligible. The variations would not result in any material overshadowing, privacy, view impacts, visually intrusive or acoustic impacts on surrounding properties or public domains. These impacts have been demonstrated to be within anticipated limits.*
- *The height and bulk and scale of the new house will maintain compatibility with the varied building height and roof forms in the locality. The house will not be highly visible from Seaforth Crescent, and it is only the upper level of the building that will be visible from some vantage points.*
- *The bulk and scale of the building is acceptable and is minimised by the siting of the new house in a similar location to the existing house but with curved wall elements that provide wide setbacks to boundaries and a deep setback from Seaforth Crescent. The low profile flat and sloping roofs and natural materials and finishes also assist in controlling bulk and scale.*
- *The elements of the new house and the roof, where the breach of the height of buildings standard occurs will not affect views to and from Middle Harbour from the adjoining properties. There are no public views over the site or the proposed house.*
- *The site has a north to south orientation similar to the adjoining properties. Shadow diagrams were prepared for 9am, 12noon and 3pm, on 21 June and submitted with the development application. The analysis confirms that the proposal will involve only a minor increase in overshadowing of the adjoining houses in the morning and afternoon period and solar access will be maintained to north facing living rooms and private open space areas in accordance with the solar access criteria of the DCP.*
- *There would be no purpose served by requiring strict compliance with the standard because the height of the dwelling where the breach the height of buildings standard occurs does not contribute to the house being excessive in height and bulk and scale when viewed from adjoining properties, from the street and from a distance from Middle Harbour. There will also be no adverse impact on the amenity of the adjoining and adjacent properties and the environmental quality and scenic amenity of the locality.*
- *There are sufficient environmental planning grounds to justify the variation of the development standard, namely:*
 - *the variation is minor and will not be perceivable from the public domain as they relate to minor section relating to the roof over the balcony, considerably setback from building*

elevations and within landscaped surrounds.

- *there will be no significant adverse amenity impacts on the surrounding properties resulting from the variation to the roof line for reasons stated in the above point.*
- *the proposal remains consistent with both the objectives of the zone and the development standard, despite the variation and is consistent with the test for being unreasonable or unnecessary.*
- *non-compliance with the standard will not add any discernible and undue bulk/ scale massing, size, which will adversely impact desired future character of the locality in comparison to a strictly compliant form.*
- *the non-compliance with the standard does not result in a scale of building that is incongruous with the existing or desired future character of the surrounding built environment.*
- *strict compliance will hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act.*
- *prior excavation of the site within the footprint of the existing building distorts the height of buildings development standard plane overlaid above the site when compared to the natural undisturbed topography of the land. When the original undisturbed levels of the site are interpolated across the building footprint the proposed development would only breach the height standard by 678mm or 7.9% as depicted on Section AA.*
- *Whilst strict compliance could be achieved by reducing ceiling heights or removing the roofing element over the upper level balcony, such outcome would not represent good design and would result in an inferior amenity outcome for occupants given the sun protection that the non-compliant roof element provides from the harsh western sun. Such outcome would thwart compliance with objective 1.3(g) of the Act. Such outcome would also not represent the orderly development of the land given the reduced design quality and amenity afforded should strict compliance be enforced and to that extent would also thwart compliance with objective 1.3(c) of the Act.*
- *The variation is well founded, as demonstrated in the preceding sections of this submission. Compliance with the standard is unreasonable as the development does not contravene the objects specified within 5(a)(i) and (ii) of the EP&A Act, the development standard under the MLEP 2013 and the R2 Low Density Residential zone.*
- *A development that strictly complies with the standard is unnecessary in this circumstance, as no appreciable benefits would result from restricting the building to the height limit.*
- *There are negligible implications to the surrounding properties, in relation to overshadowing, visual privacy, or view impacts and therefore complying with the MLEP 2013 development standard for Height of Buildings is unreasonable and unnecessary.*
- *The proposed development will be in the public interest because the development achieves each of the relevant objectives of the height of buildings standard and the objectives of the zone and is therefore consistent with them.'*

It is considered the Applicant's written request to vary development standard Clause 4.3 Height of Buildings of the *Manly Local Environmental Plan 2013* (MLEP 2013) is acceptable given the proposed resultant built form will be commensurate with surrounding and nearby residential developments, the extent of previous excavation on the site which has altered the existing ground level. Thus establishing site constraints that make strict compliance with this requirement difficult. The site falls substantially from the south-eastern boundary toward the north-western boundary, which is where the height breach occurs. However, as indicated in Figure 1 above, the extent of breach is sited only to the roof form over the proposed balcony to Bedroom 1, with the remainder of the built form sited comfortably beneath the 8.5 metre maximum height development standard.

Based on the existing excavation of the site, the maximum building height has been measured in accordance with *Merman Investments Pty Ltd Woollahra v Municipal Council* [2021] NSWLEC 1582, which is to the existing ground level. However, from an extrapolated measurement, as done

within *Bettar v Council of City of Sydney* [2014] NSWLEC 1070, the proposed development would achieve compliance with the requirement prescribed within Clause 4.3. The existing excavation is a sufficient environmental planning ground to warrant contravention of this development standard.

The proposed breach is sited along the north-western elevation. The dwelling houses at 161 Seaforth Crescent (to the north-west of the subject site) and 159 Seaforth Crescent (to the south-west of the subject site) are sited approximately 20 metres down slope and 5.5 metres, respectively, from the proposed first floor balcony (where the height of buildings breach occurs). The breach is setback a substantial distance from Seaforth Crescent, and is therefore unlikely to be discernible from the street frontage and adjoining properties, and it is unlikely to result in any unreasonable amenity impacts upon adjoining properties.

Amended plans were received which reduced the extent of the roof over the first floor level balcony by 500 millimetres, thus minimising the extent of the built form, yet not eliminating the proposed maximum height breach (as a result of the existing ground level). However, notwithstanding the numerical non-compliance, the building mass of the proposed dwelling will achieve compatibility and consistency with the building bulk of adjoining properties along Seaforth Crescent, particularly those to the south-west of the subject site. Council's records indicate that a development application (DA1/11) was approved at 159 Seaforth Crescent, which sought consent for alterations and additions (including the retention of the existing tiled roof). The approved documentation indicates the maximum ridge height for 159 Seaforth Crescent is RL53.88. The proposed maximum ridge line is RL52.95 (which is 930 millimetres less than the dwelling at 259 Seaforth Crescent). In this instance, the overall building height will not adversely or unreasonably impact upon the existing character of the streetscape.

It is noted that the Applicant acknowledged compliance *could* be achieved with this development standard. However, it is agreed that a compliant scheme would not result in an increased or improved amenity upon the subject site or adjoining properties.

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

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

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

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

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

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

Comment:

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

provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the 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 proposed maximum building height and amended roof form will be appropriate with the topographic landscape of the subject site, commensurate with the prevailing building heights of adjoining and nearby residential developments, and achieve consistency with the desired future streetscape character of the Seaforth locality.

The proposal **achieves** compliance with this objective.

b) to control the bulk and scale of buildings,

Comment:

Having regard to the portion of the building that extends beyond the prescribed maximum building height (being the roof form to the first floor balcony), the proposal in its entirety is contextually appropriate to the subject site and commensurate with nearby and adjoining residential developments. Amended plans were provided which reduced the building footprint of the proposed first floor level, ensuring that the built form is controlled and creating articulation and modulation to the first floor level.

The proposal **achieves** compliance with this objective.

c) to minimise disruption to the following:

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

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

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

Comment:

A detailed view sharing assessment has been undertaken within this assessment and this can be found in this report under section 3.4.3 Maintenance of Views. The numerical non-compliance to this development standard does not give rise to any unreasonable view loss from adjoining properties. The extent of view loss, as assessed under section 3.4.3 Maintenance of Views, is determined as minor.

The proposal **achieves** compliance with this objective.

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

Comment:

Detailed shadow diagrams and elevational shadow diagrams accompany this application. A detailed assessment of the proposed development against the solar access requirements has been undertaken within this report under section 3.4.1 Sunlight Access and Overshadowing. The proposal is considered to provide a reasonable level of solar access to the subject site and adjoining properties.

The proposal **achieves** compliance with this objective.

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

Comment:

The subject site is located within the R2 Low Density Residential zone within the MLEP 2013, which is not a recreation or environmental protection zone. Therefore, this underlying objective of Clause 4.3 is not for consideration for this assessment.

The proposal **achieves** compliance with this objective.

Zone objectives

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

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

Comment:

The proposed development will continue to provide for the housing needs of the community by retaining the residential nature of the existing dwelling. As such, the proposed development will not negatively impact upon the housing needs of the community.

The proposal **achieves** compliance with this objective.

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

Comment:

The proposed development is permissible within the R2 zone. Under this application, consent is not sought for other land uses permissible within the R2 zone. The proposed alterations and additions to the dwelling house will continue to meet the day to day needs of the residents of the subject site.

The proposal **achieves** compliance with this objective.

Conclusion:

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

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the delegate of Council as the development contravenes a numerical standard by less than or equal to 10%.

Clause 4.4 Floor Space Ratio

Description of non-compliance:

Development standard:	Clause 4.4 Floor Space Ratio
Requirement:	0.4:1 (271.0m ²)
Proposed:	0.44:1 (299.6m ²)
Percentage variation to requirement:	10%

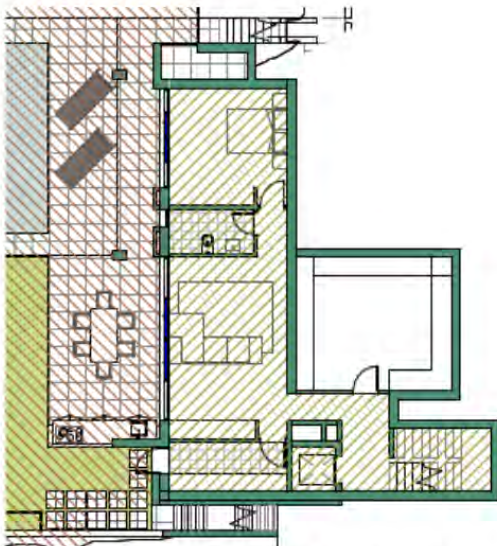


Figure 2. Lower ground floor level gross floor area indicated in green hatching.

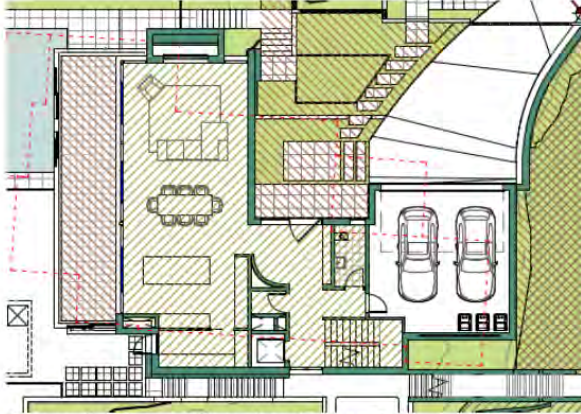


Figure 3. Ground floor level gross floor area indicated in green hatching.

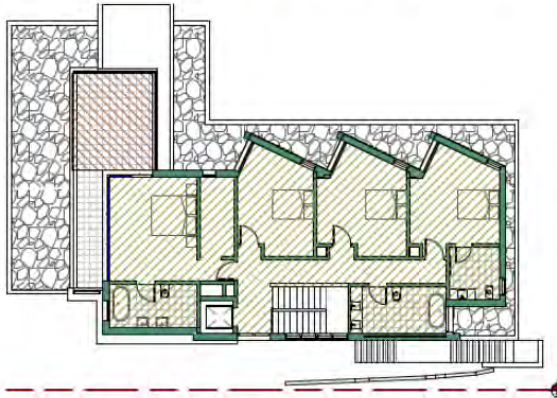


Figure 4. First floor level gross floor area indicated in green hatching.

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

Clause 4.4 - Floor space ratio development standard is not expressly excluded from the operation of this clause.

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- ‘...clause 4.1.3 of Manly Development Control Plan 2013 contains FSR exemption provisions applicable to land where the site area is less than the minimum Lot size required on the LEP Lot size map provided the relevant LEP objectives and the provisions of the DCP are satisfied. The Lot size map identifies the subject site as being in sub zone “R” in which a minimum Lot area of 750m² is required. The site having an area of only 677.5m² is well below the minimum Lot area provision and accordingly the clause 4.1.3 Manly DCP FSR variation provisions apply. Clause 4.1.3.1 states that the extent of any exception to the LEP FSR development standard pursuant to clause 4.6 of the LEP is to be no greater than the achievable gross floor area for the lot indicated in Figure 30 of the DCP. We confirm that pursuant to Figure 30 the calculation of FSR is to be based on a site area of 750m² with an achievable gross floor area of 300m². In this regard, the 299.6m² of gross floor area proposed, representing an FSR of 0.4:1 (based on 750m²), is below the maximum prescribed gross floor area of 300m² and as such complies with the DCP variation provision. As the proposed GFA/FSR complies with clause 4.1.3.1 MDCP numerical provision it is also “deemed to comply” with the associated objectives as outlined which, if complied with, demonstrate the maintenance of an appropriate visual relationships between new development and the existing character and landscape of an area.
- ...compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.
 - the proposal presents a predominantly 2 storey stepped building height to Seaforth Crescent with the stepped building form acknowledging (consistent with) the topographic landscape of the land which falls away towards its northern boundary. Consistent with the conclusions

reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191, [a considered opinion has been formed] that most observers would not find the bulk and scale of the proposed development, as viewed from Seaforth Crescent, to be offensive, jarring or unsympathetic in a streetscape context.

- neither the LEP or DCP identify any important landscape or townscape features either on or within proximity of the subject site.

- ...notwithstanding the FSR non-compliance, achieves this objective as the building density and bulk, in relation to a site area, satisfies Objective 1 of the clause 4.1.3.1 DCP provision applicable to undersized allotments, with the development not obscuring any important landscape and townscape features.

- ...notwithstanding the FSR non-compliance, maintains an appropriate visual relationship between new development and the existing built form character of the area.'

- In relation to landscape character, the application does not require the removal of any significant trees or vegetation with a building footprint maintained which is compliant with the total open space and landscaped area MDCP controls. The building will sit within a landscaped setting. The application is accompanied by a schedule of materials and finishes which will enable the development to blend into the vegetated escarpment which forms and backdrop to the site. An appropriate visual relationship between new development and the existing landscape of the area is maintained.

- views, privacy, solar access and visual amenity as environmental factors which contribute to the use and enjoyment of adjoining public and private land.

- **Views:** The assessment in relation to view loss has found that the non-compliance with the FSR will not affect views to and from Middle Harbour from the adjoining properties. The ground floor level of the new house has also been positioned so that wide side setbacks are maintained and the projection to the north and northeast and northwest is contained within and in some areas setback further from the rear and the outer corners of the existing building, to maintain view lines and reduce visual bulk from neighbouring properties. There are no public views over the site or the proposed house.

- **Privacy:** As previously indicated the proposed FSR complies with the DCP numerical FSR control applicable to undersized allotments and is therefore deemed to comply with the clause 3.4.2 privacy objectives to the extent that it can be demonstrated that the development minimises loss of privacy to adjacent and nearby development. Notwithstanding, we note that all surrounding properties are orientated to the north to take advantage of views towards Middle Harbour. This spatial relationship prevents direct overlooking between the living areas of these properties with a degree of mutual overlooking of private open space areas anticipated where all properties are orientated to take advantage of views. Given the spatial separation maintained between the balance of surrounding properties, and the primary orientation of living areas to the north towards available views, I am satisfied that the design, although non-compliant with the FSR standard, minimises adverse environmental impacts in terms of privacy and therefore achieves this objective.

- **Solar access:** The accompanying shadow diagrams demonstrate that the building, although non-compliant with the FSR standard, will not give rise to any unacceptable shadowing impact to the adjoining residential properties with compliant levels of solar access maintained.

- **Visual amenity/building bulk and scale:** the bulk and scale of the building is contextually appropriate with the floor space appropriately distributed across the site to achieve acceptable streetscape and residential amenity outcomes...most observers would not find the proposed development by virtue of its visual bulk and scale offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the site's visual catchment...notwithstanding the FSR non-compliance, achieves the objective through skilful design that minimises adverse environmental impacts on the use and enjoyment of adjoining land and the public domain.

- The development provides new dwelling to replace the existing dwelling on site which will provide for the housing needs of the community within a low density residential environment.

- *The non-compliant development, as it relates to FSR, demonstrates consistency with objectives of the R2 Low Density Residential zone and the FSR standard objectives. Adopting the first option in Wehbe strict compliance with the FSR standard has been demonstrated to be unreasonable and unnecessary.*
- *The consent authority can be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.'*

It is considered that the Applicant's reasoning to vary Clause 4.4 Floor Space Ratio (FSR) of the *Manly Local Environmental Plan 2013* (MLEP 2013) is acceptable given the proposed resultant built form will be commensurate with the other residential developments within the visual catchment of the subject site, as well as those new developments within the wider Seaforth area.

The proposed development generally achieves compliance with the front and side setback requirements, except for the side setbacks to the south-western boundary. The original plans indicated continuous wall planes along the south-western elevation, which did not provide any building modulation. The amended plans provided (which forms the basis of this assessment) shows an increase side setback to a portion of the first floor level along the south-western elevation which breaks up the continuous wall plane. The assessment concurs with the Applicant's written request in that the extent of non-compliance to the requirement prescribed under Clause 4.4 does not result in any unreasonable amenity impacts upon adjoining properties, noting that it is unlikely that the variation will be visually discernible when the subject site is viewed from adjoining and nearby properties and public spaces. An independent view loss assessment has been undertaken within this report under section **3.4.3 Maintenance of Views**. This assessment found that the proposed development provides a reasonable sharing of views amongst properties.

Furthermore, an independent assessment has been undertaken within this report with regards to control 4.1.3 Floor Space Ratio (FSR) of the Manly Development Control Plan (MDCP). This assessment concurs that the subject site is an undersized allotment and can, therefore, benefit from the exemption provisions as detailed within control 4.1.3 of the MDCP.

In this instance, the proposed resultant built form will be commensurate with adjoining and nearby two (2) and three (3) storey residential dwellings, with no adverse or unreasonable visual impact upon the existing streetscape, notwithstanding the numeric non-compliance to Clause 4.4 FSR.

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

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

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

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

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

(ii) the proposed development will be in the public interest because it is consistent with the objectives

of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Floor Space Ratio development standard and the objectives of the 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 extent of non-compliance with the FSR will not be easily discernible from the street frontage or adjoining properties. The overall built form will be commensurate with other two and three storey residential dwellings within the Seaforth area.

The proposal **achieves** compliance with this objective.

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:

Notwithstanding the numerical non-compliance to this development standard, the proposed development is located on an undersized allotment and, if the subject site achieved the minimum lot size of 1,150.0m², it would achieve compliance with this development standard. The proposal achieves compliance with the DCP numerical FSR exemption control that applies for undersized allotments (as discussed under section 4.1.3 Floor Space Ratio of this report). There are no important landscape and townscape features within proximity of the subject site, as such, the proposal is not at risk of obscuring such features.

The proposal **achieves** compliance with this objective.

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

Comment:

The proposed bulk of the built form, as detailed above and elsewhere throughout this assessment, is considered to be acceptable given the fact the subject site is an undersized allotment. In this instance, the proposed development will provide a single residential dwelling that is commensurate with adjoining and nearby residential properties along Seaforth Crescent

and other residential developments within the wider area of Seaforth. Three (3) trees are proposed to be removed, Council's Landscape Officer has noted that two (2) of these trees are exempt species and can be removed without consent. The remaining tree is supported for removal. The proposed landscape plan indicates replacement planting throughout the site. Council's Landscape Officer supports the proposed landscape plan, subject to conditions. Further, the proposed design, materials and finishes are appropriate to integrate within the landscape character of the site and surrounding land. In this instance, the existing character and landscape of the Seaforth Crescent streetscape will not be adversely or unreasonably impacted. Rather, the relationship between the proposed development and locality will be one of a positive nature that does not detract from the desired character of Seaforth.

The proposal **achieves** compliance with this objective.

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

Comment:

The proposed development has been assessed against the relevant amenity controls stipulated within the MDCP and it is considered to achieve a built form that results in minimal environmental and amenity impacts upon adjoining private properties and the public domain.

The proposal **achieves** compliance with this objective.

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 subject site is located within the R2 Low Density Residential zone. Therefore, this objective is not for consideration under this development application.

The proposal **achieves** compliance with this objective.

Zone objectives

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

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

Comment:

The proposed development will continue to provide for the housing needs of the community by retaining the residential nature of the existing dwelling. As such, the proposed development will not negatively impact upon the housing needs of the community.

The proposal **achieves** compliance with this objective.

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

Comment:

The proposed development is permissible within the R2 zone. Under this application, consent is not sought for other land uses permissible within the R2 zone. The proposed alterations and additions to the dwelling house will continue to meet the day to day needs of the residents of the subject site.

The proposal **achieves** compliance with this objective.

Conclusion:

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

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

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

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

6.1 Acid sulfate soils

Clause 6.1 - 'Acid sulfate soils' requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

The site is located in an area identified as Acid Sulfate Soil Class 5, as indicated on Council's Acid Sulfate Soils Planning Map.

Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land is required to be assessed to determine if any impact will occur.

The development proposes to excavate the site to approximately 1.35 metres to 3.0 metres below the natural ground level. Regardless, the subject site is not within 500 metres of adjacent Class 1, 2 3 or 4 on the Manly Acid Sulfate Soils Map under the MLEP 2013. In this regard, an Acid Sulfate Soil Management Plan is not required to be provided for assessment with this application.

6.2 Earthworks

Under Subclause 1, the objectives of Clause 6.2 - 'Earthworks' require development:

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

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

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

Comment: The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality. Council's Development Engineer has reviewed the proposed development, as amended, and no concerns were raised with regards to the proposal's impact or disruption upon 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: A Waste Management Plan (prepared by Ursino Architects, dated 24 April 2023) has been provided with this development application. 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, and any excavated material to be re-used on site or disposed of in accordance with the Waste Management Plan.

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

Comment: The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. A condition has been recommended which requires the Applicant undertake a pre and post dilapidation report upon 159 Seaforth Crescent, Seaforth to ensure the excavation works do not have an impact upon this adjoining property.

- (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. As detailed above, 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 located in the vicinity of Sydney Harbour. However, the site is not within the vicinity of a drinking water catchment or environmentally sensitive areas. A condition has been

recommended which requires the installation and maintenance of sediment and erosion control measures to ensure that any excavated material does not enter the nearby Sydney Harbour.

(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.

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

6.4 Stormwater management

Under subclause (3), development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

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

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

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

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

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

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

6.5 Terrestrial biodiversity

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

(a) protecting native fauna and flora, and

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

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

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

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

Comment:

The proposed development includes the removal of three (3) trees, garden areas and lawn. Council's Landscape Officer has reviewed the proposed development and no concerns were raised, subject to recommended conditions. It shall be noted that two (2) of the three (3) trees are exempt species that can be removed without consent; the remaining tree is supported for removal. Council's Bushland and Biodiversity Officer has reviewed the proposed development and no concerns were raised, subject to recommended conditions - one of which being the replacement planting of one (1) native tree on the site.

As such, it is considered that the proposed development is unlikely to have an adverse impact upon the matters prescribed in the above 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 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 proposed development has been appropriately designed and sited in such a way that avoids significant adverse environmental impacts.

6.8 Landslide risk

The subject site is not located on the Landslide Risk map. Therefore, this Clause does not apply.

6.9 Foreshore scenic protection area

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

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

activities.

Comment:

The subject site is not located on the water frontage of Sydney Harbour, there are multiple dwellings between the subject site and Sydney Harbour. In this instance, the visual amenity of Sydney Harbour and the coastal foreshore area will not be unreasonably or adversely impacted by the proposed development. Additionally, the proposal will not cause overshadowing of the foreshore area or create any view loss from a public place to the foreshore area due to the significant spatial separation between the foreshore area and the subject site. As a result of this spatial separation, the proposal does not need to consider measures that will protect and improve the scenic qualities of the coastline. The proposal is suitable given the context of the subject site, location and design of the dwelling house and ancillary structures. Notwithstanding, as previously noted, the proposal will not unreasonably impact upon the foreshore area. By virtue of the spatial separation, the proposal does not result in a conflict between land-based and water-based coastal activities.

6.10 Limited development on foreshore area

The foreshore building line does not apply to the subject site. Therefore, this Clause does not apply.

6.12 Essential services

The subject site has been used for residential purposes for an extended period of time, and therefore the following is available to the site:

- supply of water,
- supply of electricity,
- disposal and management of sewage,
- stormwater drainage or on-site conservation,
- suitable vehicular access.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 677.5m ²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	South-western Elevation 8.0m (based on gradient 1:4+)	2.95m - 9.33m	16.6% max.	No
	North-western Elevation 6.5m (based on gradient 0)	6.1m - 9.4m	44.6% max.	No
	South-eastern Boundary 7.3m (based on gradient 1:7.5)	2.61m - 4.03m	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	0.6m	N/A	Yes
	Pitch: maximum 35 degrees	0 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	North-eastern Boundary Prevailing building line / 6m	<i>Lower Ground Floor Level Dwelling: 2.24m</i>	62.6%	No

4.1.4.2 Side Setbacks and Secondary Street Frontages		<i>Ground Floor Level</i> Dwelling: 2.3m - 10.6m Balcony: 3.4m	61.6% max. 42.5%	No No
		<i>First Floor Level</i> Dwelling: 7.95m - 10.05m Balcony: 5.4m - 5.5m	N/A 10% max.	Yes No
	South-western Boundary 3.17m (based on proposed maximum wall height)	<i>Lower Ground Floor Level</i> Dwelling: 2.15m BBQ terrace: 4.08m External stairs: 1.08m	32.17% N/A 65.9%	No Yes No
		<i>Ground Floor Level</i> Dwelling: 2.17m - 3.86 Balcony: 4.45m External stairs: 1.08m	31.5% N/A 65.9%	No Yes No
		<i>First Floor Level</i> Dwelling: 2.3m - 3.88m Balcony: 4.60m External stairs: 1.08m	27.4% N/A 65.9%	No Yes No
		North-western Boundary 3.19m (based on proposed maximum wall height)		
		<i>Lower Ground Floor Level</i> Dwelling: 8.24m - 12.56m BBQ terrace: 6.75m - 8.45m	N/A N/A	Yes Yes
		<i>Ground Floor Level</i> Dwelling: 7.25m - 12.55m Balcony: 4.35m - 7.85m	N/A N/A	Yes Yes

		<i>First Floor Level</i> Dwelling: 10.7m - 12.75m Balcony: 7.8m - 10.7m	N/A N/A	Yes Yes
	South-eastern Boundary Secondary frontage: 1.33m (based on side setback requirements)	<i>Ground Floor Level</i> Dwelling: 5.7m - 7.85m	N/A	Yes
		<i>First Floor Level</i> Dwelling: 3.6m - 5.5m	N/A	Yes
	South-western Boundary Windows: 3m	<i>Ground & First Floor Levels</i> 2.3m	23.3%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% (406.5m ²) of the total site area	63.9% (433.2m ²)	N/A	Yes
	Open space above ground 25% (101.62m ²) of total open space	12.3% 54.5m ²	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% (177.28m ²) of proposed open space	50.1% (217.1m ²)	N/A	Yes
	4 native trees	>4 trees	N/A	Yes
4.1.5.3 Private Open Space	18.0m ²	>18.0m ²	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	North-eastern Frontage Maximum 50% of frontage up to maximum 6.2m	18.9% of the frontage, 6.60m	6.45%	No
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	In-ground	N/A	Yes
	1m curtilage/1.5m water side/rear setback	North-eastern Elevation Curtilage: 1.55m Water Side: 2.4m	N/A N/A	Yes Yes
		North-western Elevation Curtilage: 1.25m Water Side: 1.63m	N/A N/A	Yes Yes
		South-western	N/A	Yes

		Elevation Curtilage: 10.53m Water Side: 11.41m	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	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
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.6 Energy efficiency/conservation requirements for non-residential developments	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 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	No	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	No	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes
Schedule 3 - Parking and Access	Yes	Yes
Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles	Yes	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

Detailed description

3.1.1.1 Complementary Design and Visual Improvement

- a) *For 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;*
 - ii) *ensure the bulk and design of development does not detract from the scenic amenity of the area (see also paragraph 3.4 Amenity) when viewed from surrounding public and private land;*
 - iii) *maintain building heights at a compatible scale with adjacent development particularly at the street frontage and building alignment, whilst also having regard to the LEP height standard and the controls of this plan concerning wall and roof height and the number of storeys;*
 - iv) *avoid elevated structures constructed on extended columns that dominate adjoining sites such as elevated open space terraces, pools, driveways and the like. See also paragraph 4.1.8 Development on Sloping Sites and paragraph 4.1.9 Swimming Pools, Spas and Water Features;*
 - 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. See also paragraph 3.2 Heritage Considerations;*
 - vi) *visually improve existing streetscapes through innovative design solutions; and*
 - 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. See also paragraph 3.5.7 Building Construction and Design.*

Setback principles in Low Density Areas

b) In lower density areas including LEP Zones R2, E3 & E4, setbacks should be maximised to enable open space to dominate buildings, especially on the foreshore. See also paragraph 3.3 Landscaping and paragraph 4.1.5 Open Space and Landscaping.

Comment:

The built form, when viewed from the street frontage of Seaforth Crescent, presents as a two (2) storey dwelling. The overall design of the built form is contemporary, which is commensurate with other newer developments within the locality.

Furthermore, the building form is consistent with dwellings sited on steeply sloping sites. The building mass is reasonable in its context, therefore the bulk and design of the development does not cause unreasonable visual impacts that detract from the scenic amenity of the area when viewed from surrounding public and private land.

Notwithstanding the proposed building height, the overall height is considered commensurate with adjacent development (as indicated on drawing no. A402 Section BB Rev B, dated 31 October 2023 - which is indicative of the built form when viewed from the rear of the site). When viewed from the street frontage the building height is commensurate with adjoining and surrounding developments and is appropriate for the subject site. Where the proposal may extend beyond the maximum wall height, a detailed assessment has been undertaken elsewhere in this report under section 4.1.2 Height of Buildings (incorporating wall height, number of storeys and roof height).

Due to the slope of the land, the ground floor balcony is elevated above the existing ground level along the north-western elevation. Notwithstanding, this does not result in a visually dominant built form when viewed from the street frontage of Seaforth Crescent. Appropriate screening measures have been included along the south-western elevation of the ground floor and first floor balcony to increase privacy between properties.

The subject site is not a heritage item, nor is it sited within a heritage conservation area. Further, the subject site is not within a visual catchment of nearby heritage items and, therefore, cannot unreasonably impact upon the heritage item.

As indicated in the perspectives provided within the architectural plans, the proposed development (inclusive of the materials and colours proposed, and landscaping) will visually improve the existing streetscape through innovative design solutions.

3.1.1.2 Front Fences and Gates

- a) Notwithstanding maximum height provisions for fencing at paragraph 4.1.10; the siting, height and form of boundary fences and walls should reflect the fencing characteristic of the locality, particularly those of adjacent properties. All fencing and wall materials must be compatible with the overall landscape character and the general appearance of the building and the streetscape.*
- b) Boundary fences or walls must not be erected where they would conflict with the local character*
- c) Front fences and gates must be constructed in materials that complement the architectural style and period of the dwelling and improve the streetscape. In particular, fencing adjacent to a public road or place must not be constructed in metal cladding, power coated or otherwise.*
- d) Gates must not encroach on public land when opening or closing.*

Comment:

Within the visual catchment of the subject site, there are no fences on adjoining properties to which the proposed fence and gates should complement. Notwithstanding, the amended application included a reduced the maximum height of the front fence to a more appropriate height that does not cause a

'walled' effect. The lower portion of the front fence is brick, while the upper portion is transparent paneling that is consistent with the sliding vehicle gate and pedestrian gate. The proposed front fence steps down with the land and has been setback from the north-eastern boundary line so as to allow for landscape planting to soften the visual impact of the front fence.

The proposed materials of the front fence and gates include a light coloured brick with black timber-look battens. These colours and materials are commensurate with the overall colours and materials of the proposed dwelling and does not create an unreasonable impact upon the existing streetscape character.

A condition will be recommended to ensure that the pedestrian gate will open inwards to the property boundary to ensure there is no encroachment on public land.

3.4.1 Sunlight Access and Overshadowing

Description of non-compliance

3.4.1.1 Overshadowing Adjoining Open Space

This control requires that new development must not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm at the winter solstice, which is 21 June.

The proposed development continues to provide solar access to the rear private open space of 159 Seaforth Crescent, Seaforth (which is the property to the south-west).

Overshadowing is proposed to the driveway and carport between 9am and 3pm. However, this does not reduce the solar access by more than one third, and is therefore considered to be reasonable.

The proposed development achieves compliance with this requirement.

3.4.1.2 Maintaining Solar Access into Living Rooms of Adjacent Properties

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

This control as stipulates that for all adjacent buildings (regardless of the lot orientation) no reduction in solar access is permitted to any window where existing windows enjoy less than the minimum number of sunlight hours specified above. The dwelling at 159 Seaforth Crescent, Seaforth enjoys solar access that meets the minimum requirement prescribed above, save for the two (2) windows on the lower ground level on the north-eastern elevation, which are sited to the laundry and bathroom. These are not habitable rooms, and are therefore not for consideration under this assessment.

Hourly elevational shadow diagrams have been provided with this application, which indicates overshadowing to the kitchen and dining room window and door along the north-eastern elevation of the dwelling at 159 Seaforth Crescent between 9am and 12pm, on the first floor level; as well as overshadowing to the bedroom window on the lower ground floor level. However, from 11am onwards, there is no overshadowing to this bedroom window.

The elevational shadow diagrams show that, at every passing hour, the overshadowing dissipates (as

indicated in the figure below). It is noted that the north-western elevation of 159 Seaforth Crescent has sliding glass doors and fixed windows which provides solar access (unobstructed by the proposed development) to the internal living room, dining area and kitchen on the first floor.

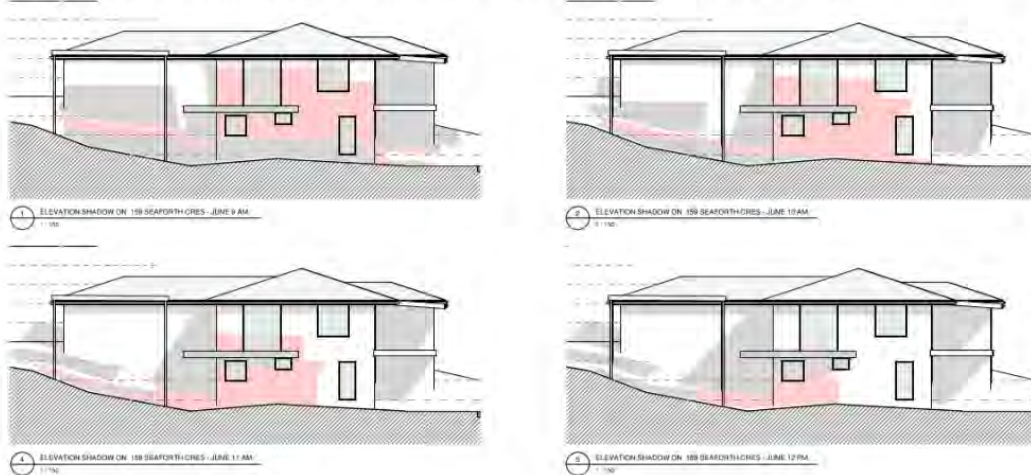


Figure 5. Elevational shadow diagrams between 9am and pm, additional overshadowing indicated by red shading (prepared by Ursino Architects, Rev B, dated 31 October 2023).

Between 12pm and 3pm, the proposed development does not cause overshadowing to the internal living rooms of 159 Seaforth Crescent (as indicated in the figure below).

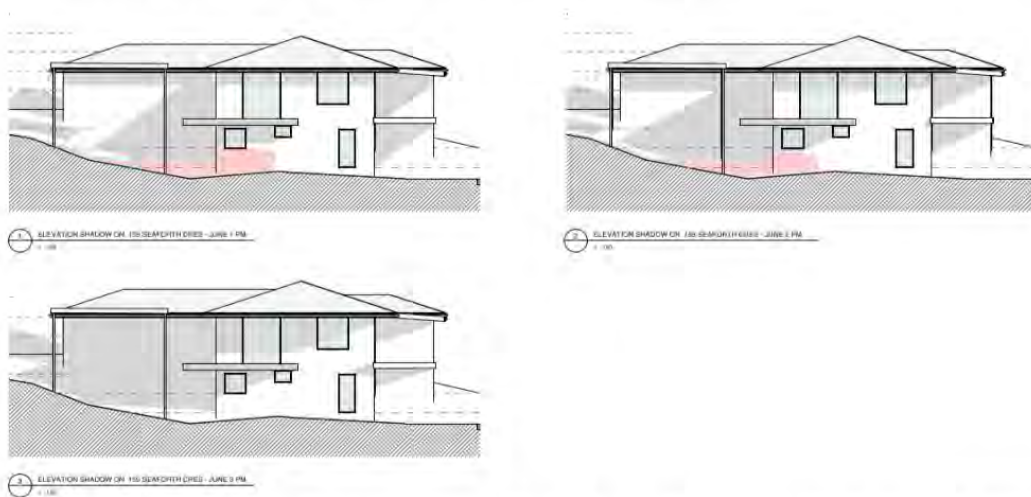


Figure 6. Elevational shadow diagrams between 12pm - 3pm, additional overshadowing indicated by red shading (prepared by Ursino Architects, Rev B, dated 31 October 2023).

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 provide equitable access to light and sunshine.

Comment:

As indicated in the above figures, and submitted shadow diagrams, the proposed development provides a reasonable and equitable level of solar access to adjoining properties.

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:

As detailed above under section **3.4.1.1 Overshadowing Adjoining Open Space**, the proposed development provides a reasonable (and compliant) level of solar access to the private open spaces of adjoining properties, particularly 159 Seaforth Crescent. Notwithstanding the additional overshadowing to internal rooms of 159 Seaforth Crescent, there remains a reasonable level of solar access to the internal living spaces and habitable rooms of 159 Seaforth Crescent.

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:

As detailed above, and on the proposed shadow diagrams, the proposed development allows for the reasonable penetration of sunlight into the windows of living rooms (including the kitchen and dining area) of 159 Seaforth Crescent. The proposed development does not cause unreasonable overshadowing to the rear private open space of 159 Seaforth Crescent.

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.

3.4.2 Privacy and Security

Description of non-compliance

3.4.2.1 Window Design and Orientation

This control requires the use of narrow, translucent or obscured glass windows to maximise privacy, where necessary and that when building close to boundaries, windows must be off-set from those in the adjacent building to restrict direct viewing and to mitigate impacts on privacy.

3.4.2.2 Balconies and Terraces

This control stipulates that architectural or landscape screens must be provided to balconies and terraces to limit overlooking of nearby properties. If an architectural screen is proposed, these must be fixed in position and suitably angled to protect visual privacy. Further, a recessed design of balconies and terraces can also be used to limit overlooking and maintain privacy.

A submission has been received which raised concern regarding adverse privacy impacts upon 159 Seaforth Crescent, which is sited to the south-west of the subject site. The proposed development includes the following windows/balconies/doors along the south-western elevation:

- **Lower ground floor level:**
 - no windows proposed
- **Ground floor level:**
 - highlight window sited to the garage (W09), with a sill height of 2.1 metres when measured from the finished floor level. This window does not cause unreasonable privacy impacts upon the occupants of 159 Seaforth Crescent.
 - floor to ceiling window proposed to the lift foyer and internal staircase (W08). It is likely that this window will be sited within proximity to the windows of the internal living area at 159 Seaforth Crescent. As such, a condition will be recommended to ensure this window is either frosted or a privacy screen is externally affixed to this window to limit unreasonable overlooking into 159 Seaforth Crescent.
 - a 2.9 metre high (measured from the finished floor level of the proposed balcony) operable privacy screen is proposed to the entire south-western outer edge of the balcony which is located off the kitchen, dining and living area. This privacy screen provides a reasonable level of privacy between properties and does not require change.
- **First floor level:**
 - highlight window sited to the main bathroom (W22), with a sill height of 2.1 metres when measured from the finished floor level. This window does not cause unreasonable privacy impacts upon the occupants of 159 Seaforth Crescent.
 - floor to ceiling window proposed to the internal staircase (W21). This window will have a fixed external privacy screen for the full extent of the window. This window does not cause unreasonable privacy impacts upon the occupants of 159 Seaforth Crescent.
 - floor to ceiling window proposed to the lift foyer and internal staircase (W20). It is likely that this window will be sited within proximity to the windows of the internal living area at 159 Seaforth Crescent. As such, a condition will be recommended to ensure this window is either frosted or a privacy screen is externally affixed to this window to limit unreasonable overlooking into 159 Seaforth Crescent.
 - a balcony is proposed off Bedroom 1. A 2.3 metre high fixed privacy screen is proposed along the full extent of the south-western outer edge of this balcony. This privacy screen provides a reasonable level of privacy between properties and does not require change.

Due to the siting of the subject site in its relationship to Seaforth Crescent, there are no privacy concerns toward the north-east. As detailed elsewhere in this report, the closest dwelling to the north-west is a substantial distance from the subject site, and sited downslope. Therefore, there are no unreasonable privacy impacts upon 161 Seaforth Crescent, 161A Seaforth Crescent and 163 Seaforth Crescent.

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 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:

As conditioned, the proposed development provides a reasonable level of privacy between the subject site and adjoining properties.

The proposal **achieves** this objective.

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:

As detailed above, the proposal includes privacy screens affixed to balconies and terraces, where necessary, and angled fixed screens to windows. These privacy mitigation strategies will not adversely or unreasonably compromise access to light and air.

The proposal **achieves** this objective.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposed development will not compromise neighbourhood security or casual surveillance of the street frontage.

The proposal **achieves** this objective.

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.

3.4.3 Maintenance of Views

Merit consideration:

A submission has raised concern regarding view loss from both public and private properties (specifically Seaforth Crescent and 159 Seaforth Crescent, Seaforth). As such, an assessment of the proposal against the objectives of this control and in accordance with the four (4) planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*.

The development is considered against the Objectives of the Control:

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

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

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

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.

STEP ONE

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

Comment:

159 Seaforth Crescent currently enjoys partially obscured (by existing canopy trees and built form of adjoining properties) views of the water, land/water interface and district views toward the north, east and west. These views do not include any structures (built or natural) that would be considered as 'iconic'.

STEP TWO

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:

159 Seaforth Crescent, Seaforth enjoys partially obscured water and land/water interface views toward the north, north-east, west and north-west over the rear and side boundaries. These views are obtained in both a standing and seated position from the internal and external areas of the dwelling (including the kitchen, dining, living area and bedroom on the ground floor, and the outdoor terrace on the ground floor), as indicated in the figures below. Not explicitly shown in the figures below, but can be ascertained from the figures, is that water and land/water interface views toward the north, north-east, west and north-west are obtained from the lower ground floor level from both internal and external areas.



Figure 7. Standing in the kitchen on the ground floor level, facing east, across the side boundary.

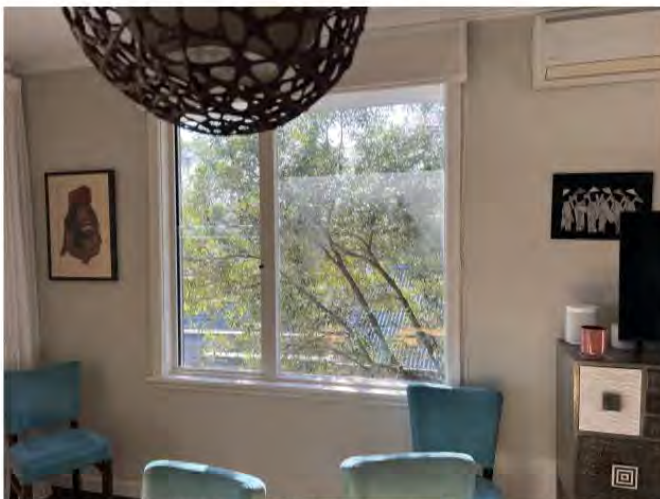


Figure 8. Standing in the dining area on the ground floor level, facing east, across a side boundary.



Figure 9. Sitting at the dining table on the ground floor level, facing east, over the side boundary.



Figure 10. Standing in the living area on the ground floor level, facing east, over the side boundary.



Figure 11. Standing in the living area on the ground floor level, facing north-east, over the rear and side boundary



Figure 12. Sitting in the living area on the ground floor level, facing east, over the side boundary.



Figure 13. Sitting in the living area on the ground floor level, facing north-east, over the rear and side boundaries.



Figure 14. Standing on the outdoor balcony on the ground floor level, facing east, over the side boundary.



Figure 15. Standing on the outdoor balcony on the ground floor level, facing north-east, over the rear and side boundaries.



Figure 16. Standing on the outdoor balcony on the ground floor level, facing north, over the rear boundary.



Figure 17. Standing on the outdoor balcony on the ground floor level, facing north-west, over the rear and side boundaries.



Figure 18. Sitting at the table on the outdoor balcony on the ground floor level, facing east, over the side boundary.



Figure 19. Sitting at the table on the outdoor balcony on the ground floor level, facing north-east, over the rear and side boundaries.



Figure 20. Sitting at the table on the outdoor balcony on the ground floor level, facing north, over the rear boundary.



Figure 21. Sitting on the table on the outdoor balcony on the ground floor level, facing north-west, over the rear and side boundary.



Figure 22. Standing in the bedroom on the ground floor level, facing east, over the side boundary.



Figure 23. Standing in the bedroom on the ground floor level, facing north-west, over the rear boundary.

STEP THREE

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

Comment:

As indicated in Figures 7 - 23, 159 Seaforth Crescent has partial water, land/water interface and district views, obtained from both a standing and seated position over the side and rear boundaries from internal and external areas of the dwelling on the ground floor and lower ground floor levels, toward the north-east, north, and north-west. The subject site to which this development relates to is located to the east of this property. As shown in Figures 7 (kitchen), 8 and 9 (dining area), the views directly to the east over the side boundary do not encompass water, land/water or district views. The existing tree and roof form on the subject site provide an obstruction to district views in an easterly/north-easterly direction. Rather, the view over the side boundary includes the roof form to the

dwelling on the subject site. As shown in all remaining figures relating to 159 Seaforth Crescent, the views toward the north-east, north and north-west of both the water, land/water interface and district views presently enjoyed will not be interrupted by the proposed development. By virtue of this, the views currently enjoyed on the lower ground floor level of the dwelling will not be interrupted by the proposed development.

From 159 Seaforth Crescent, Seaforth, the assessment has considered the views obtained for the *whole* of the property (as required under this step), and it has found that the extent of view loss from this property is **minor** and, therefore, a reasonable sharing of views is proposed.

STEP FOUR

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:

Amended plans were provided which reduced the maximum building height non-compliance, increased the south-western side setback to a portion of the first floor level, reduced the front fence (north-eastern boundary) maximum height, and amended the landscape plan. Notwithstanding, the proposal continues to result in areas of numeric non-compliance to the Clause 4.3 and Clause 4.4 of the MLEP 2013, as well as non-compliances to the following MDCP controls: wall height, street front setback (to the north-eastern boundary), side setbacks (to the south-western boundary) and parking design.

It is reiterated that, under Step Three (3) above, consideration of view sharing must be undertaken for the *whole of the property*. However, as shown in the figures above, the water, land/water interface and district views currently enjoyed by the occupants of 159 Seaforth Crescent are predominantly toward the north and north-west. Therefore, strict compliance with all relevant built form controls within the MDCP and MLEP 2013, or a more skilful design, will not alter the extent of views over the eastern side boundary of 159 Seaforth Crescent. Therefore, the extent of non-compliances do not give rise to unreasonable impacts upon view sharing between properties.

Notwithstanding the numerical non-compliances to relevant controls within the MLEP and MDCP, the extent of view loss, which is considered as minor when assessing the views obtained from the whole property, is acceptable, in this instance.

Submissions also raised concern that the proposed development will result in loss of views from the public domain, specifically from Seaforth Crescent. In determining the extent of potential view loss from the public domain, the planning principles outlined within the Land and Environmental Court case of *Rose Bay Marina Pty Limited Vs Woollahra Municipal Council and anor (213) NSWLEC 1046* are applied to the proposed development.

1. Nature and Scope of Views

The first step is to identify the nature and scope of the existing views from the public domain, including, but not limited to:

- *Any existing obstructions of the view;*

- *Composition of the view (e.g. is it static or dynamic and, if dynamic, the nature and frequency of changes to the view);*
- *Are existing obstructions permanent or temporary;*
- *The curtilages of important elements within the view.*

Comment:

Views from various points of Seaforth Crescent within the visual catchment of the subject site include partial and wholly obstructed views comprising the water, land/water interface and district views toward the north, east and west. These views are partially and wholly obstructed at various points by the existing and natural built form on both the subject site and adjoining/nearby properties. These views do not include any structures (built or natural) that would be considered as 'iconic'. The views are static and permanent.

2. Locations of View Interruptions

The second step is identify the locations in the public domain from which the potentially interrupted view is enjoyed.

Comment:

The view corridor observed is from a standing position, from the southern side of Seaforth Crescent between no's 159 Seaforth Crescent and 159a Seaforth Crescent, as well as from the south-eastern side of Seaforth Crescent between 159A Seaforth Crescent and 163 Seaforth Crescent. Submissions raise concern that the views from the public domain within the visual catchment of the subject site will be affected.



Figure 24. Standing on the southern side of Seaforth Crescent, facing north, toward the subject site opposite the driveway of 159 Seaforth Crescent.



Figure 25. Standing on the southern side of Seaforth Crescent, facing north-west, toward the subject site opposite the driveway of 159 Seaforth Crescent.



Figure 26. Standing on the southern side of Seaforth Crescent, facing north, toward the subject site opposite the driveway of 159 Seaforth Crescent.



Figure 27. Standing on the south-eastern side of Seaforth crescent, facing north-west, toward the subject site (indicated by yellow dot).



Figure 28. Standing on the western side of Seaforth Crescent at the driveway for the subject site, facing north-west (subject site indicated with yellow dot).



Figure 29. Standing on the western side of Seaforth Crescent at the driveway for the subject site, facing north (subject site indicated with yellow dot).

3. Extent of Obstructions

The third step is to identify the extent of the obstruction at each relevant location. The impact on appreciation of a public domain view should not be subject to any eye height constraint. A public domain view is one that is for the enjoyment from many positions by all people.

Comment:

The view between 159 Seaforth Crescent and 159A Seaforth Crescent is heavily obstructed by existing vegetation and the relationship between the topography and driveway of 159 Seaforth Crescent, allowing for a brief and minor view corridor when standing slightly up hill to the driveway of 159 Seaforth Crescent (Figure 26). This view is lost when standing slightly downhill from the driveway of 159 Seaforth Crescent (Figure 25). The views as shown in Figures 24 - 26 are generally only available to those at fully grown adult height. The water and district views toward the north-west (Figures 27 - 29) will not be impacted by the proposed development.

It is anticipated that the proposed development will obstruct the view as shown in Figure 26.

4. Intensity of the Use of the Relevant Public Spaces

The fourth step is to identify the intensity of public use of those locations where enjoyment of the view will be obstructed, in whole or in part, by the proposed development.

Comment:

Seaforth Crescent is primarily used by residents and their visitors, and cyclists along the shared road. There are no pedestrian footpaths in the vicinity of the subject site and any passersby on foot are forced onto the road. Therefore, it is not anticipated that casual users of the street will spend time observing the view from the roadway.

5. Documentation of the Views

The fifth step to be identified is whether there is any document that identifies the importance of the view to be assessed, such as international, national, state or local heritage recognition, or where the relevant planning controls promote or specifically requires the retention or protection of public domain views.

Comment:

The affected view is not known to be publicly documented, and there are no specific planning controls for the retention of the view.

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.

4.1.1.1 Residential Density and Dwelling Size

As will be assessed under section 4.1.3 Floor Space Ratio within this report, the subject site is an undersized allotment as the minimum lot size is 1150.0m². The subject site has a lot size of 677.5m². Therefore, the site cannot comply with the minimum density requirement for a lot size of 1150.0m², as prescribed within this control.

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

Description of non-compliance

4.1.2.1 Wall Height

This control requires development to result in a maximum wall height that is calculated based on the slope of the land sited under the proposed wall. Due to the irregularly shaped allotment and its siting on a corner of Seaforth Crescent, the site does not technically have a rear boundary line. Rather, it has a primary and secondary frontage and two (2) side boundaries.

The gradient of the land sited under the south-western and north-western elevations are as follows:

- **South-western elevation:** gradient 1:4+
- **North-western elevation:** gradient 0

In this instance, the maximum wall height **requirement** for the elevations are as follows:

- **South-western elevation:** 8.0 metres
- **North-western elevation:** 6.5 metres

The proposed wall heights are as follows:

- **South-western elevation:** 2.95 metres to 9.33 metres (resulting in a gradual non-compliant variation of 16.6%)
- **North-western elevation:** 6.1 metres to 9.4 metres (resulting in a gradual non-compliant variation of 44.6%)

The extent of these non-compliances are indicated in the figures below.

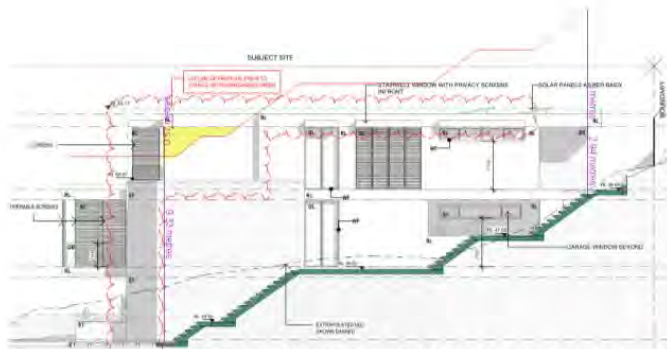


Figure 1. South-western elevation wall height non-compliance indicated in yellow shading.



Figure 2. North-western elevation wall height non-compliance indicated in yellow shading.

4.1.2.2 Number of Storeys

This control stipulates the following:

- buildings must not exceed 2 storeys, except on land in areas 'L' and 'N1' on the LEP Height of Building Map and notwithstanding the wall and roof height controls in this plan.
- buildings on land in areas 'L' and 'N1' on the LEP Height of Building Map Buildings must not exceed 3 storeys notwithstanding the wall and roof height controls in this plan.
- variation to the maximum number of storeys may be considered:
 - where specific physical site constraints warrant an exception to this requirement. In these circumstances the development must still fully comply with other numeric height controls and development standards; and
 - to allow an additional understorey where that storey satisfies the meaning of basements in the LEP.

Comment:

The subject site is not located on areas 'L' or 'N1' on the MLEP Height of Buildings Map. Further, the lower ground level is predominantly basement level, as shown on drawing no. A401 Rev B 'Section

AA'. The rear part of the dwelling results in three storeys, as the storage area is considered to be basement, in accordance with the definition of 'basement' within the MLEP 2013.

Merit consideration

There are no underlying objectives of this control under which to consider the merits of this variation. This control instead relies on the objectives for the Height of Buildings at clause 4.3 in the *Manly LEP 2013*. The proposal has been assessed against these objectives under clause 4.6, above in this report. In summary, the proposed wall height, notwithstanding the numerical non-compliances, can be supported on its merits.

4.1.3 Floor Space Ratio (FSR)

A detailed assessment of the Floor Space Ratio (FSR) variation has been undertaken within the section of this report relating to Clause 4.6 of the *Manly Local Environmental Plan 2013* (MLEP 2013). In summary, the Applicant has adequately justified that compliance with the requirements stipulated within Clause 4.4 Floor Space Ratio Development Standard is unreasonable and unnecessary, and that there are sufficient environmental planning grounds to contravene this development standard.

The subject site has a total area of 677.5m² and has an FSR requirement of 0.4:1 (271.0m²) under the MLEP 2013. The proposed FSR is 0.44:1 (299.6m²), which presents a variation of 10%. However, the subject site is considered an 'undersized allotment' as it is located on Area U of the Lot Size Map (LSZ Map) of the MLEP 2013, which requires a minimum lot size of 1,150.0m².

When calculating the FSR against a site area of 1,150.0m², the proposed development would result in an FSR of 0.26:1, which would technically comply if the subject site adhere to the minimum site area for Area U on the LSZ Map in the MLEP 2013.

Notwithstanding, the proposal has been assessed against the requirements and objectives of Clause 4.6 of the MLEP 2013 within this report.

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

Description of non-compliance

4.1.4.1 Street Front Setbacks

This control requires development to be setback 6.0 metres from the front boundary line or maintain the prevailing building line. The north-eastern boundary is considered the primary front boundary. The proposed development, on the lower ground, ground floor, and first floor levels, results in varying non-compliances to the front boundary line.

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 maximum wall height.

The *side setback requirements*, as based on the proposed maximum wall heights, are as follows:

- South-western boundary: 3.17 metres
- North-western boundary: 3.19 metres
- South-eastern boundary (secondary frontage): 1.42 metres

Furthermore, this control requires windows to be setback 3.0 metres from side boundaries. The proposal results in windows on both the ground and first floor levels along the south-western boundary with a setback distance of 2.3 metres, which presents a variation of 23.3%.

The proposed development results in side setback non-compliances to elements of the proposal on the lower ground, ground and first floor levels to the south-western boundary, with the greatest non-compliance occurring as a result of the proposed external staircase.

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 front boundary line (at it's closest point) is setback approximately 10.95 metres from the street frontage, thus allowing for substantial spatial separation from the existing streetscape. In this instance, and notwithstanding the proposed numerical non-compliance to the north-eastern boundary, the proposed development will enhance the existing streetscape by providing an articulated building mass that presents as two (2) storeys to Seaforth Crescent. Further, the proposed landscaping will contribute to the landscape character of the street. In this instance, the proposal appropriately relates to the desired spatial proportions of the streetscape in the immediate visual catchment of the subject site.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposed development has been assessed against the relevant privacy requirements stipulated under control 3.4.2 Privacy and Security. The assessment has found that, subject to recommended conditions, the proposal provides a reasonable level of privacy between properties. The proposed development has been assessed against the relevant solar access requirements stipulated under control 3.4.1 Sunlight Access and Overshadowing. The assessment has found that the proposal provides a reasonable level of solar access between properties. A view sharing assessment, in accordance with *Tenacity v Warringah Council* and *Rose Bay Marina Pty Limited v Woollahra Municipal Council* has been undertaken within this assessment report under section 3.4.3 Maintenance of Views. The assessment has found the proposal provides a reasonable sharing of views. The proposed development has been assessed against the requirements of 3.1.1.1 Complementary Design and Visual Improvement and the assessment has found that the proposal provides a complementary design that visually improves the streetscape within a low density area.

Finally, the proposal provides safe and adequate traffic conditions when entering and existing the subject site by providing a reasonable and safe level of visibility around the corner as the proposal seeks to maintain the existing driveway to Seaforth Crescent.

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

Comment:

Notwithstanding the numerical non-compliances to the side setback requirements, adequate spatial separation on either side of the proposed dwelling at each level ensures that there is flexibility in the siting of the building.

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 respects the site's natural features in that it provides a compliant landscaped area with deep soil zones and includes additional planting of native species and trees throughout the subject site.

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

Comment:

The subject site is not located within bushfire prone land.

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.

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

Description of non-compliance

4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas

This control stipulates that the maximum width of any garage, carport or hardstand area is not to exceed a width equal to 50 percent of the frontage, up to a maximum width of 6.2 metres.

The proposed garage width is 6.6 metres (this presents a variation of 6.45%), which is 18.9% of the frontage. Notwithstanding the maximum width, the proposed garage is proportionally appropriate in the context of the site and siting of the dwelling. The proposed garage does not create an unreasonable bulk, nor does it adversely impact upon the streetscape. In this instance, notwithstanding the proposed width of 6.6 metres, the garage is considered acceptable and can be supported on its merits, as detailed in the assessment below.

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 provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).

Comment:

Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles of the Manly Development Control Plan (MDCP) stipulates that two (2) parking spaces must be provided for a dwelling house. The proposed development provides two (2) parking spaces within the garage, and therefore achieves compliance with this requirement and objective.

Objective 2) To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.

Comment:

The proposed off-street parking meets the minimum requirement for on-site parking as stipulated under Schedule 3 of the MDCP, therefore the demand for on-street parking is not increased by this proposal.

Objective 3) To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape.

Comment:

The site, as existing, has two (2) internal driveways, both located off the shared carriageway from Seaforth Crescent, as indicated by the red and yellow shading in the figure below.



Figure 3. Existing driveways, indicated in yellow and red shading.

The proposed driveway is sited in a similar location to the existing driveway shown in red in the above figure. In this instance, the location and design of the proposed driveway and garage is efficient, safe and convenient for the occupants (and any visitors) of the subject site. These have been appropriately integrated into the design of the development so as to minimise any adverse impacts upon the existing streetscape.

Objective 4) To ensure that the layout of parking spaces limits the amount of site excavation in order to avoid site instability and the interruption to ground water flows.

Comment:

The proposed garage is sited on the ground floor level and, according to drawing no. A401 Rev B Section AA, does not require excavation. In this instance, the proposed layout of the garage limits the amount of site excavation to avoid site instability and the interruption to ground water flows.

Objective 5) To ensure the width and number of footpath crossings is minimised.

Comment:

The existing vehicle crossing at Seaforth Crescent is being retained, with no additional vehicle crossings proposed. As such, the number of footpath crossings to Seaforth Crescent is not changing under this development application.

Objective 6) To integrate access, parking and landscaping; to limit the amount of impervious surfaces and to provide screening of internal accesses from public view as far as practicable through appropriate landscape treatment.

Comment:

As detailed above, the proposed garage is appropriately integrated into the built form. The extent of driveway within the site does not cause and unreasonable increased in pervious areas on the site. A front fence and a variety of landscaping treatments are proposed within the front setback area. In this instance, these will provide sufficient screen of the internal access points of the dwelling when viewed from public spaces.

Objective 7) To encourage the use of public transport by limiting onsite parking provision in Centres that are well serviced by public transport and by encouraging bicycle use to limit traffic congestion and promote clean air.

Comment:

This objective does not relate to residential developments. As such, consideration of this objective is not required.

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.

4.4.5 Earthworks (Excavation and Filling)

Detailed description of non-compliance

4.4.5.2 Excavation

This control requires the following:

- a) *Excavation is generally limited to 1m below natural ground level with the exception of basement*

parking areas (which will be contained within the footprint of the building) and swimming pools;
b) A dilapidation survey report and geotechnical assessment may be required for excavation works exceeding 1m. Dilapidation survey reports are to include photographic survey of the physical condition of adjoining properties, both internally and externally, including walls ceilings, roof, structural members and other such items. Such records are to provide proper record in relation to the proposed development to particularly assist in any dispute over damage to adjoining proposed arising from the works. It is in the interests of applicants and adjoining landowners for it to be as full and as detailed as necessary commensurate with the nature of the proposed development.

Merit consideration

Objective 1) To retain the existing landscape character and limit change to the topography and vegetation of the Manly Local Government Area by:

- Limiting excavation, 'cut and fill' and other earthworks;*
- Discouraging the alteration of the natural flow of ground and surface water;*
- Ensuring that development not cause sedimentation to enter drainage lines (natural or otherwise) and waterways; and*
- Limiting the height of retaining walls and encouraging the planting of native plant species to soften their impact.*

Comment:

Due to the slope of the land, the proposal includes excavation to facilitate the lower ground level and swimming pool. The extent of excavation extends beyond 1.0 metre below the natural ground level, as indicated on the proposed plans. In this instance, a condition has been recommended to ensure the Applicant undertakes, and provides to the Certifier, a pre-dilapidation report prior to the issue of the Construction Certificate. The pre-dilapidation report is to consider 159 Seaforth Crescent, Seaforth. Additionally, a condition has been recommended that ensures a sediment and erosion control fence is installed, and is to remain for the entire construction phase, on site to avoid sediment run-off into adjoining properties. The proposal also includes landscaping throughout the site, which will soften the visual impact of the proposed built form.

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.

5.4.1 Foreshore Scenic Protection Area

This control stipulates the following:

Development in the Foreshore Scenic Protection Area must not detrimentally effect the 'visual or aesthetic amenity of land in the foreshore scenic area nor must the development similarly effect the views of that land, including ridgelines, tree lines and other natural features viewed from the Harbour or Ocean from any road, park or land in the LEP for any open space purpose or any other public place. Any adverse impacts considered in this paragraph will be mitigated. In accordance with these LEP objectives Council seeks to conserve and preserve tree canopies and street trees, wildlife corridors and habitat and minimise cumulative impacts on escarpment, rock shelves and other natural landscape features.

Comment:

While the subject site is located within the foreshore scenic protection area, it is not located on the

water frontage of Middle Harbour. The maximum dwelling height is predominantly below the prescribed height within Clause 4.3 Height of buildings of the MLEP 2013. In this instance, the visual and aesthetic amenity of the land in the foreshore scenic area is not unreasonably or adversely impacted by the proposed development, nor are there any unreasonable view impacts to and from the foreshore area from nearby public places. The proposed development has been assessed against the matters prescribed within Clause 6.9(a)-(d) within the MLEP 2013 elsewhere in this report under section **6.9 Foreshore scenic protection area**.

The assessment has found that the proposed development does not unreasonable impact upon the foreshore scenic protection area.

Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles

This Clause requires 2 on-site parking spaces for a dwelling house.

The proposed new dwelling provides 2 parking spaces within the garage. In this instance, the proposal achieves compliance with this requirement.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$13,555 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,355,481.

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 demolition works and construction of a dwelling house including swimming pool has been referred to the Development Determination Panel (DDP) as the proposed development seeks to vary Clause 4.3 and Clause 4.4 of the MLEP 2013 by 10% each.

The concerns raised in the objections have been addressed within the assessment report. The amended plans have reduced the proposed first floor level and reduced the maximum building height. As such, the assessment has found that concerns relating to building height and building mass have been resolved. However, where necessary, recommended conditions have been included to minimise amenity impacts upon adjoining properties.

Critical assessment issues included Clause 4.6 Exceptions to development standards, acid sulfate soils, earthworks, stormwater management, terrestrial biodiversity, landslide risk, foreshore scenic protection area, limited development on foreshore area, essential services, streetscape (residential areas), sunlight access and overshadowing, privacy and security, maintenance of views, residential density and dwelling size, height of buildings, floor space ratio, setbacks and building separation, parking, vehicular access and loading, and parking rates and requirements for vehicles.

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

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

RECOMMENDATION

That Northern Beaches Council as the consent authority permits a contravention of clause 4.3 Height of Building 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 DA2023/0870 for Demolition works and construction of a dwelling house including swimming pool on land at Lot 1 DP 212783, 159 A Seaforth Crescent, SEAFORTH, 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
A202	B	Site Plan	Ursino Architects	31 October 2023
A203	A	Demolition Plan	Ursino Architects	23 June 2023
A301	B	Lower Ground Floor Plan	Ursino Architects	31 October 2023
A302	B	Ground Floor Plan	Ursino Architects	31 October 2023
A303	B	First Floor Plan	Ursino Architects	31 October 2023
A304	B	Roof Plan	Ursino Architects	31 October 2023
A305	A	Pool Plan	Ursino Architects	23 June 2023
A401	B	Section AA	Ursino Architects	31 October 2023
A402	B	Section BB	Ursino Architects	31 October 2023

A501	B	Northeast Elevation	Ursino Architects	31 October 2023
A502	B	Southeast Elevation	Ursino Architects	31 October 2023
A503	B	Southwest Elevation	Ursino Architects	31 October 2023
A504	B	Northwest Elevation	Ursino Architects	31 October 2023
A721	A	Excavation and Fill Plan	Ursino Architects	23 June 2023
A901	B	Materials & Window Schedules	Ursino Architects	31 October 2023
23009 C1.00	2	Driveway Layout Plan	Cates Consulting Engineers	1 May 2023
23009 C2.00	2	Driveway - LHS Longitudinal Section Plan	Cates Consulting Engineers	1 May 2023
23009 C3.00	2	Driveway - RHS Longitudinal Section Plan	Cates Consulting Engineers	1 May 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate 1374806S_03	N/A	Integreco Consulting Pty Ltd	28 October 2023
Arboricultural Impact Assessment	A	Hugh the Arborist	24 May 2023
Geotechnical Investigation Report	0	Geo-environmental Engineering	15 May 2023
Waste Management Plan	N/A	Ursino Architects	24 April 2023
L-01 Landscape Plan	D	Eco Design	25 October 2023
SW1 Stormwater Drainage Plan	A	ML Civil and Structural Design	15 March 2023
SW2 Stormwater Drainage Plan	A	ML Civil and Structural Design	15 March 2023
A602 Construction Management Plan	A	Ursino Architects	23 June 2023

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

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

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

2. **Compliance with Other Department, Authority or Service Requirements**

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	Not dated

(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 *Manly Local Environmental Plan 2013*, 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 (Demolition):**

- (a) 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 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
 - (ii) 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.

(b) 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.

(c) 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.

Reason: Legislative Requirement.

5. Prescribed Conditions

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

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

- (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative requirement.

6. General requirements (Demolition):

- (a) Unless authorised by Council:
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) At all times after the submission a Notice of Commencement to Council, a copy of the Development Consent is to remain onsite at all times until completion of demolition works. The consent shall be available for perusal of any Authorised Officer.

- (c) 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.

- (d) 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.

- (e) The applicant shall bear the cost of all works that occur on Council's property.
- (f) No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (g) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (h) All sound producing plant, equipment, machinery or fittings will not exceed more than 5dB(A) above the background level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy.)
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

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

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 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.

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 within the kitchenette on the lower ground level, other than those shown in the designated kitchen area on the ground level.

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 \$13,554.81 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$1,355,481.00.

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. On Slab Landscape Works

Details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided.

Landscape treatment details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, and services connections.

The following soil depths are required to support landscaping: 300mm for groundcovers and grasses; and 600mm for shrubs.

Design certification shall be submitted to the Certifier by a qualified Structural Engineer, that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

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

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. **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 ML Civil and Structural Design, project number 23.045, drawing number SW1 & SW2, dated 15.03.2023. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

14. **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 an existing drainage easement.

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.

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

The recommendations identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the construction certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

16. **Vehicle Crossings Application**

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 3 metres wide on the kerb and a maximum of 4.5 metres wide on the property boundary in accordance with Northern Beaches Council Standard Drawing A4 3330/3 NL in accordance with Section 138 of the Roads Act 1993.

Note, driveways are to be in plain concrete only.

The fee associated with the assessment and approval of the application is to be in accordance

with Council's Fee and Charges.

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

Reason: To facilitate suitable vehicular access to private property.

17. **Off Street Parking Design**

The Applicant shall submit a design for the parking facility in accordance with the relevant provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical Controls and Section 2.6 Design of Domestic Driveways.

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

Reason: Compliance with this consent.

18. **Amendments to the approved plans**

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

- W08 and W20 are to be treated with either translucent glazing for the full extent of the area of these windows or an external privacy screen is to be fixed to these windows for the full extent of the area of these windows. Should the Applicant choose to install a privacy screen, it must be consistent with the dimensions, materials and colours for the privacy screen affixed to W21.

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.

19. **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.

20. **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.

21. **Compliance with standards (Demolition):**

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

Details demonstrating compliance with the relevant Australian Standard are to be submitted to Council prior to the commencement of demolition works.

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

22. **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.

23. **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.

24. **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

25. **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 sections 9 Recommendations, 10 AMS and Tree Protection Requirements, and 11 Hold Points.
- 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.

26. **Tree Removal Within the Property**

This consent approves the removal of existing trees on the subject site as identified in the Arboricultural Impact Assessment, approved Plans, or as listed below:

- a) tree 13 - *Livistona australis*,
- 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.

27. **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.

Properties:

- **159 Seaforth Crescent, Seaforth**
- **The shared driveway for 161, 161A, 161B and 161C Seaforth Crescent, Seaforth for the extent the subject site boundaries adjoining this shared driveway.**

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.

28. Installation and Maintenance of Sediment and Erosion Control

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site

DURING BUILDING WORK

29. Protection of Rock and Sites of Significance

All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.

Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: Preservation of significant environmental features.

30. Tree and Vegetation Protection

- a) Existing trees and vegetation shall be retained and protected, including:
- i) all trees within the site not approved for removal, including trees and vegetation nominated

for retention on the approved Plans,
ii) all trees and vegetation located on adjoining properties,
iii) all trees and vegetation within the road reserve.

b) Tree protection shall be undertaken as follows:

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

The Principal Certifier must ensure that:

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

Reason: Tree and vegetation protection.

31. 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.

32. **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.

33. **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.

34. **Removing, Handling and Disposing of Asbestos**

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

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

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

35. **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.

36. **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.

37. **Site Filling - Virgin Excavated Natural Material (VENM)**

Where site fill is necessary, fill materials must:

a. Be Virgin Excavated Natural Material (VENM) only, as defined in: The Protection of the Environment Operations Act 1997

b. Be free of slag, hazardous, contaminated, putrescibles, toxic or radioactive excavated material and soil, rock or similar material. Putrescibles and non- putrescibles solid waste (including demolition material) is not permitted.

c. The Applicant shall provide certification by a N.A.T.A. approved laboratory to the Principal Certifier for approval prior to importation of material.

Reason: To ensure protection of the natural environment.

38. **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.

39. **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.

40. **24 Hour Access to Shared Driveway**

The existing shared driveway for 161, 161A, 161B and 161C Seaforth Crescent, Seaforth is to remain unobstructed during construction, with continued 24 hour access maintained for the occupants (and visitors) to these properties.

Reason: To minimise construction impacts upon adjoining properties.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

41. **Landscape Completion**

Landscape works are to be implemented in accordance with the approved Landscape Plan(s) (drawing L-01 by Eco Design dated 25/10/23), and inclusive of the following conditions:

- a) landscape works are to be contained within the legal property boundaries,
- b) all tree planting shall be a minimum pre-ordered planting size of 75 litres; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
- c) tree, shrub and groundcover planting shall be installed as indicated on the approved Landscape Plan(s),
- d) mass planting shall be installed at minimum 1 metre intervals for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,
- e) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces,
- f) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone.

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

Reason: Environmental amenity.

42. **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.

43. **Replacement of Canopy Trees**

At least 1 locally native canopy tree is to be planted on the site to replace protected trees approved for removal. Species are to have a minimum mature height of 8.5m and be consistent with the Native Planting Guide available on Council's website.

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.

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. **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.

47. **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.

48. **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.

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

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

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

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

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

50. **Certification of Off Street Parking Works**

The Applicant shall submit a certificate from a suitably qualified person certifying that the parking facility was constructed in accordance within this development consent and the

relevant provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical Controls and Section 2.6 Design of Domestic Driveways.

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

Reason: Compliance with this consent.

51. **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.

52. **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

53. **Landscape Maintenance**

a) if any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components.

b) trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

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

d) a maintenance activity schedule for on-going maintenance of planters on slab shall be incorporated to monitor and replenish soil levels as a result of soil shrinkage over time.

e) the approved landscape planted areas, whether containing lawn, gardens or planters shall in perpetuity remain as planting under the development consent, and shall not be replaced with any hard paved surfaces or structures.

Reason: To maintain local environmental amenity.

54. **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.

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

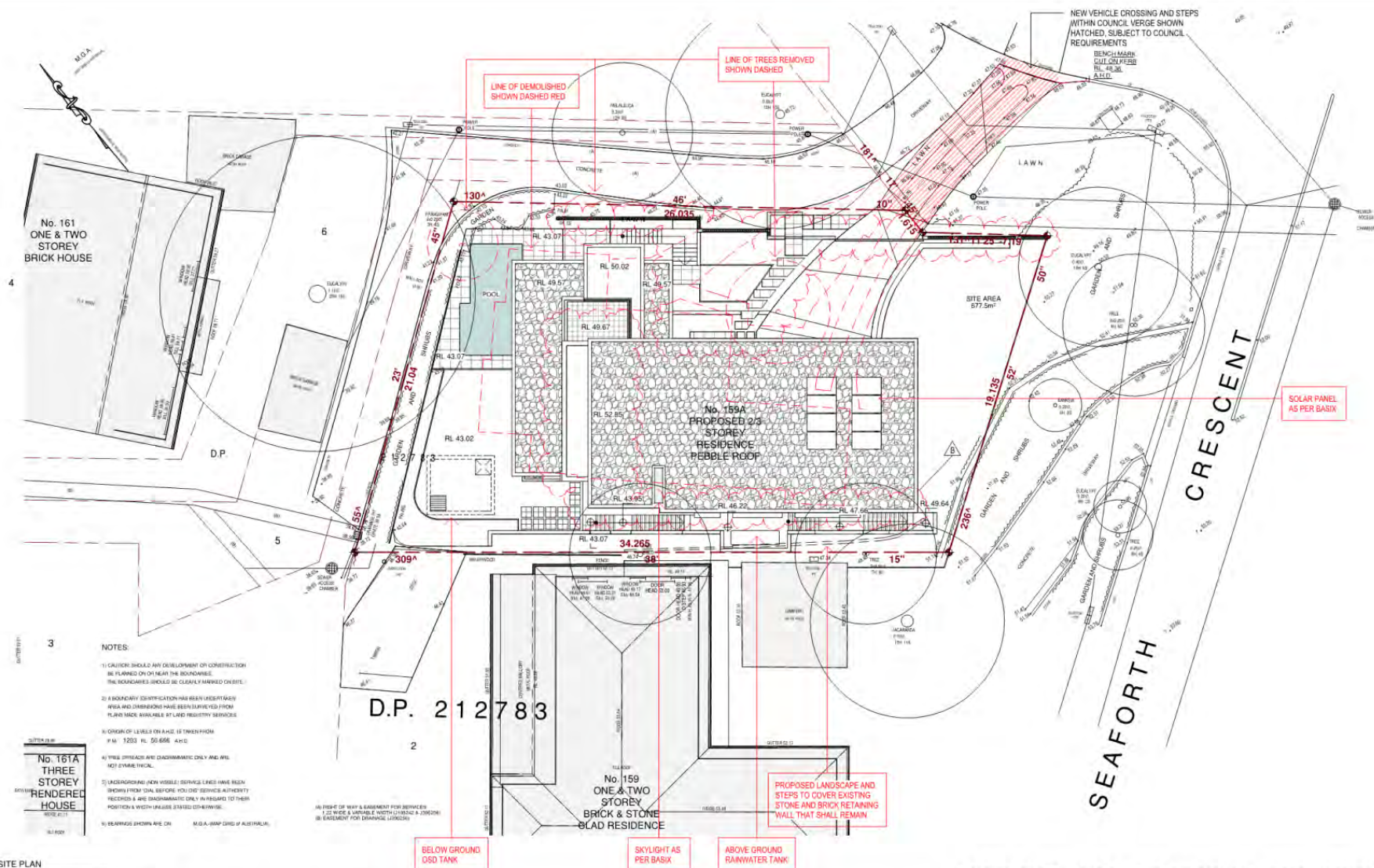
The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

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

56. **Pedestrian Gate**

The proposed pedestrian gate is to open inwards, with no encroachment beyond the property boundary into public land.

Reason: To ensure the proposed development remains wholly within the property boundaries.



1 SITE PLAN
1:200



**URSINO
ARCHITECTS**

Suite 313, 49 Queens Road Five Dock NSW 2046
(02) 8970 2421 / PO Box 981 Five Dock NSW 2046
www.ursino.com.au
REGISTERED ARCHITECT: Robert Ursino NSW ARB No: 19565

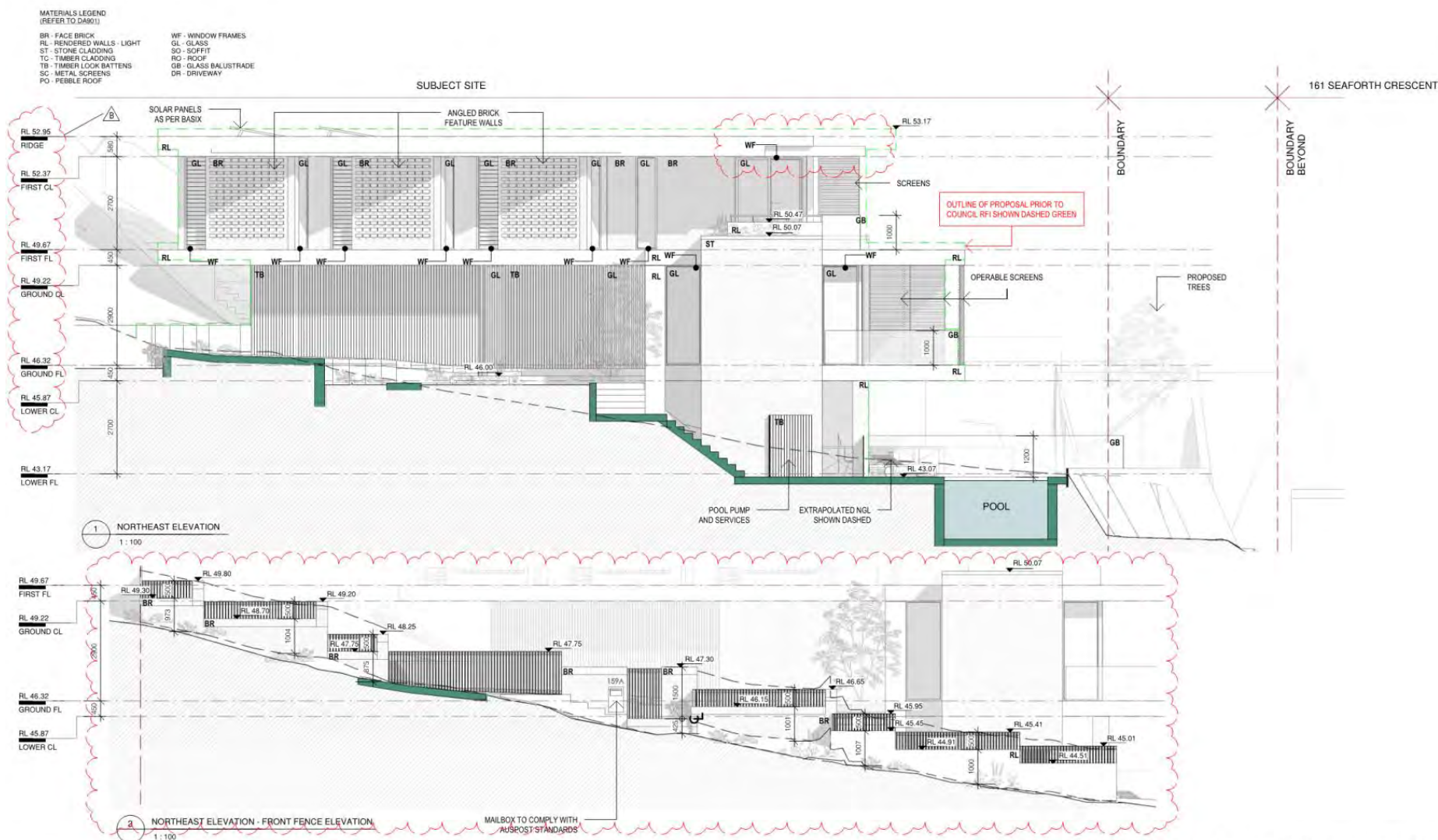
REVISION	DESCRIPTION	DATE
A	DEVELOPMENT APPLICATION ISSUE A - NOT FOR CONSTRUCTION	23/06/2023
B	RFI 01	31/10/2023

LEGEND & NOTES
○ EXISTING TREE TO BE RETAINED
○ EXISTING TREE TO BE REMOVED

GENERAL NOTES: ALL DIMENSIONS TO BE VERIFIED BY BUILDER PRIOR TO COMMENCEMENT OF WORKS. ○ BOUNDARY DIMENSIONS & ALL LEVELS SUBJECT TO CONFIRMATION BY BUILDER. USE FOUR DECIMALS DIMENSIONS ONLY. DO NOT SCALE FROM PLANS. ○ ALL WORKS TO COMPLY WITH THE RELEVANT AUSTRALIAN STANDARDS. ○ ALL WORKS ARE TO BE CARRIED OUT IN ACCORDANCE WITH THE REQUIREMENTS OF THE BUILDING CODE OF AUSTRALIA. ○ ALL DIMENSIONS ARE GIVEN EXTENT ONLY AND NOT FOR CONSTRUCTION.
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ADDITIONAL INFO - NOT FOR CONSTRUCTION

CLIENT MACRI	SCALE 1:200	BY AS	DRAWING TITLE SITE PLAN
ADDRESS 159A SEAFORTH CRES SEAFORTH NSW 2092	DRAWN BY LC	DESIGNED BY RU	TRUE NORTH
	PROJECT NO. 21.15	REV B	DATE 31/10/2023
			DRAWING NO. A202



ADDITIONAL INFO - NOT FOR CONSTRUCTION



**URSINO
ARCHITECTS**

Suite 313, 49 Queens Road Five Dock NSW 2046
(02) 8970 2421 / PO Box 981 Five Dock NSW 2046
www.ursino.com.au
REGISTERED ARCHITECT: Robert Ursino NSW ARB No: 10565

REVISION	DESCRIPTION	DATE
A	DEVELOPMENT APPLICATION ISSUE A - NOT FOR CONSTRUCTION	23/06/2023
B	RFI-01	31/10/2023

LEGEND & NOTES

EXISTING
DEMOLISHED
NEW CAVITY BRICK
NEW SINGLE BRICK
NEW TIMBER

GENERAL NOTES: ALL DIMENSIONS TO BE VERIFIED BY BUILDER PRIOR TO COMMENCEMENT OF WORKS. IF BOUNDARY DIMENSIONS & ALL LEVELS SUBJECT TO CONFIRMATION BY BUILDER. USE FOLLOWING DIMENSIONS ONLY. DO NOT SCALE FROM PLANS. IF ALL WORKS TO COMPLY WITH THE RELEVANT AUSTRALIAN STANDARDS. IF ALL WORKS ARE TO BE CARRIED OUT IN ACCORDANCE WITH THE REQUIREMENTS OF THE BUILDING CODE OF AUSTRALIA. IF ALL DRAWINGS ARE DESIGN INTENT ONLY AND NOT FOR CONSTRUCTION.

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SMOKE DETECTOR	WM
WASHING MACHINE	DRY
DRYER	SL
SKYLIGHT	
NEW WORK SHOWN HATCHED	

CLIENT
MACRI

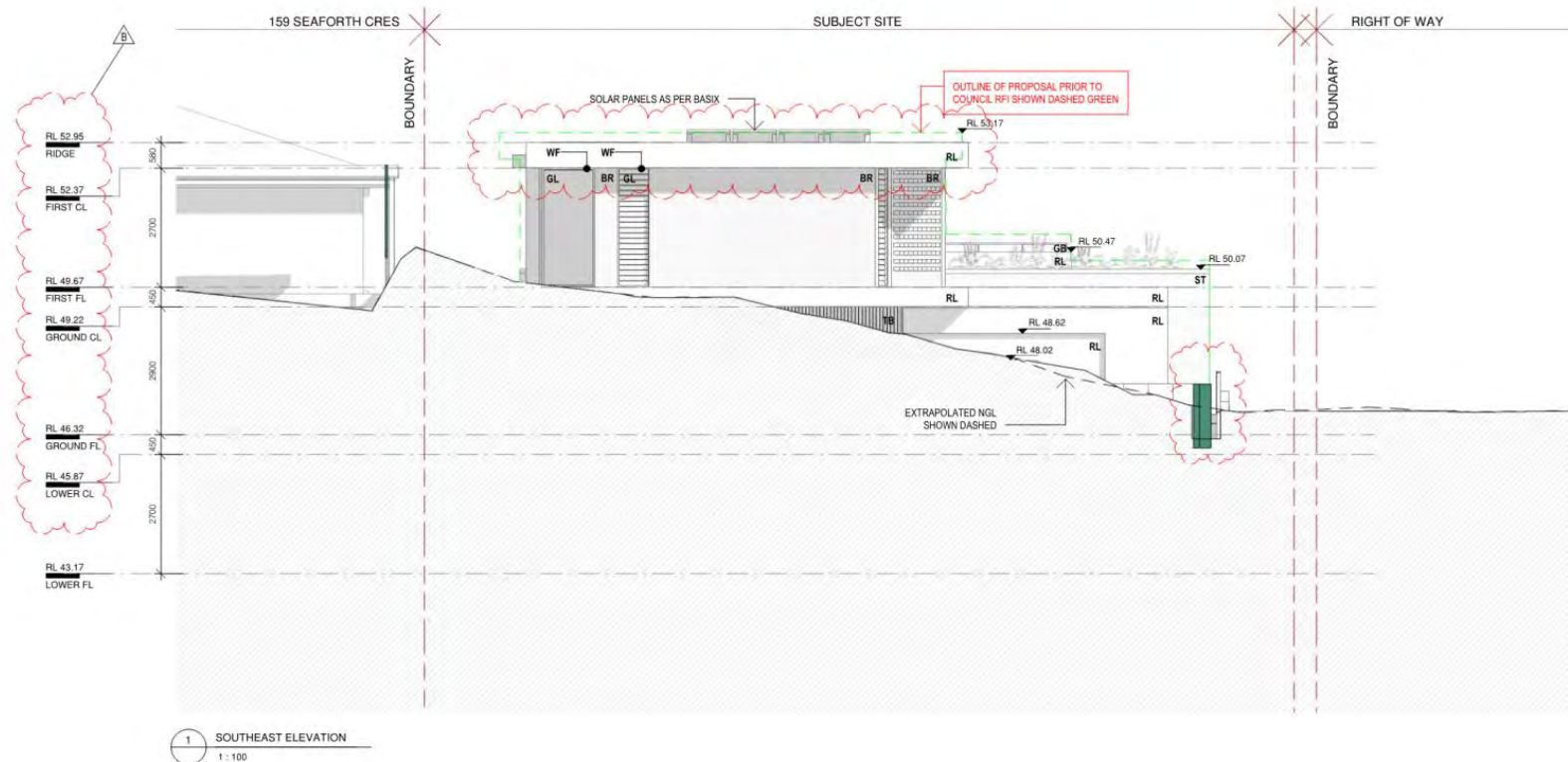
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159A SEAFORTH CRES
SEAFORTH NSW 2092

SCALE	@ A3	DRAWING TITLE	
1 : 100		NORTHEAST ELEVATION	
DRAWN BY:		DESIGNED BY:	TRUE NORTH: DATE
LC		RU	31/10/2023
PROJECT NO:		REV	DRAWING NO:
21.15		B	A501

MATERIALS LEGEND
(REFER TO DRAWING)

BR - FACE BRICK
RL - RENDERED WALLS - LIGHT
ST - STONE CLADDING
TC - TIMBER CLADDING
TB - TIMBER LOOK BATTENS
SC - METAL SCREENS
PO - PEBBLE ROOF

WF - WINDOW FRAMES
GL - GLASS
SO - SOFFIT
RO - ROOF
GB - GLASS BALUSTRADE
DR - DRIVEWAY



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www.ursino.com.au
REGISTERED ARCHITECT: Robert Ursino NSW ARB No: 10565

REVISION	DESCRIPTION	DATE	LEGEND & NOTES
A	DEVELOPMENT APPLICATION ISSUE A - NOT FOR CONSTRUCTION	23/06/2023	EXISTING
B	RFI-01	31/10/2023	DEMOLISHED
			NEW CAVITY BRICK
			NEW SINGLE BRICK
			NEW TIMBER

GENERAL NOTES: ALL DIMENSIONS TO BE VERIFIED BY BUILDER PRIOR TO COMMENCEMENT OF WORKS. IF BOUNDARY DIMENSIONS & ALL LEVELS SUBJECT TO CORROBORATION BY BUILDER. USE FIGURED DIMENSIONS ONLY. DO NOT SCALE FROM PLANS. IF ALL WORKS TO COMPLY WITH THE RELEVANT AUSTRALIAN STANDARDS. IF ALL WORKS ARE TO BE CARRIED OUT IN ACCORDANCE WITH THE REQUIREMENTS OF THE BUILDING CODE OF AUSTRALIA. IF ALL DRAWINGS ARE DESIGN INTENT ONLY AND NOT FOR CONSTRUCTION.

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ADDITIONAL INFO - NOT FOR CONSTRUCTION

SMOKE DETECTOR
WASHING MACHINE
DRYER
SKYLIGHT
NEW WORK
SHOWN HATCHED

CLIENT
MACRI

ADDRESS
**159A SEAFORTH CRES
SEAFORTH NSW 2092**

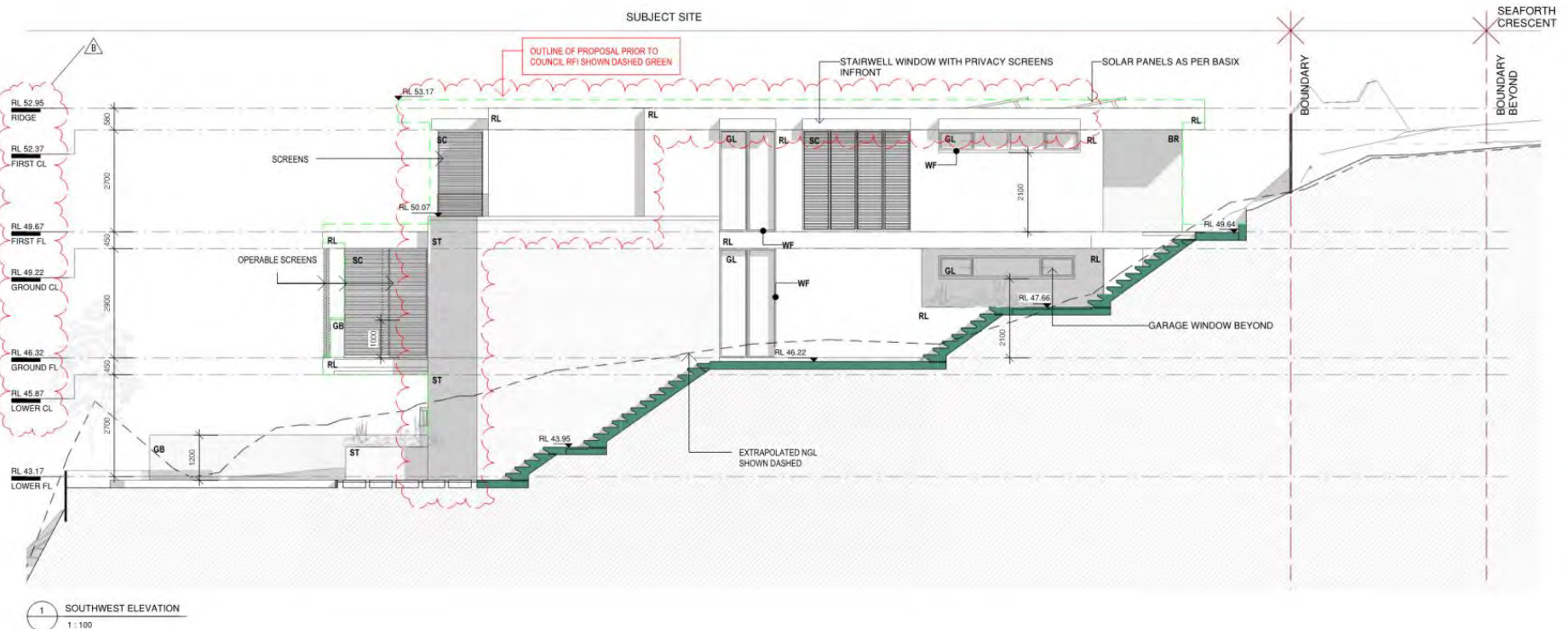
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1:100
SOUTHEAST ELEVATION

DRAWN BY: **LC**
DESIGNED BY: **RU**
TRUE NORTH: **REV**
DATE: **31/10/2023**
PROJECT NO: **21.15**
DRAWING NO: **B**
A502

MATERIALS LEGEND
(REFER TO DRAWING)

BR - FACE BRICK
RL - RENDERED WALLS - LIGHT
ST - STONE CLADDING
TC - TIMBER CLADDING
TB - TIMBER LOOK BATTENS
SC - METAL SCREENS
PO - PEBBLE ROOF

WF - WINDOW FRAMES
GL - GLASS
SO - SOFFIT
RO - ROOF
GB - GLASS BALUSTRADE
DR - DRIVEWAY



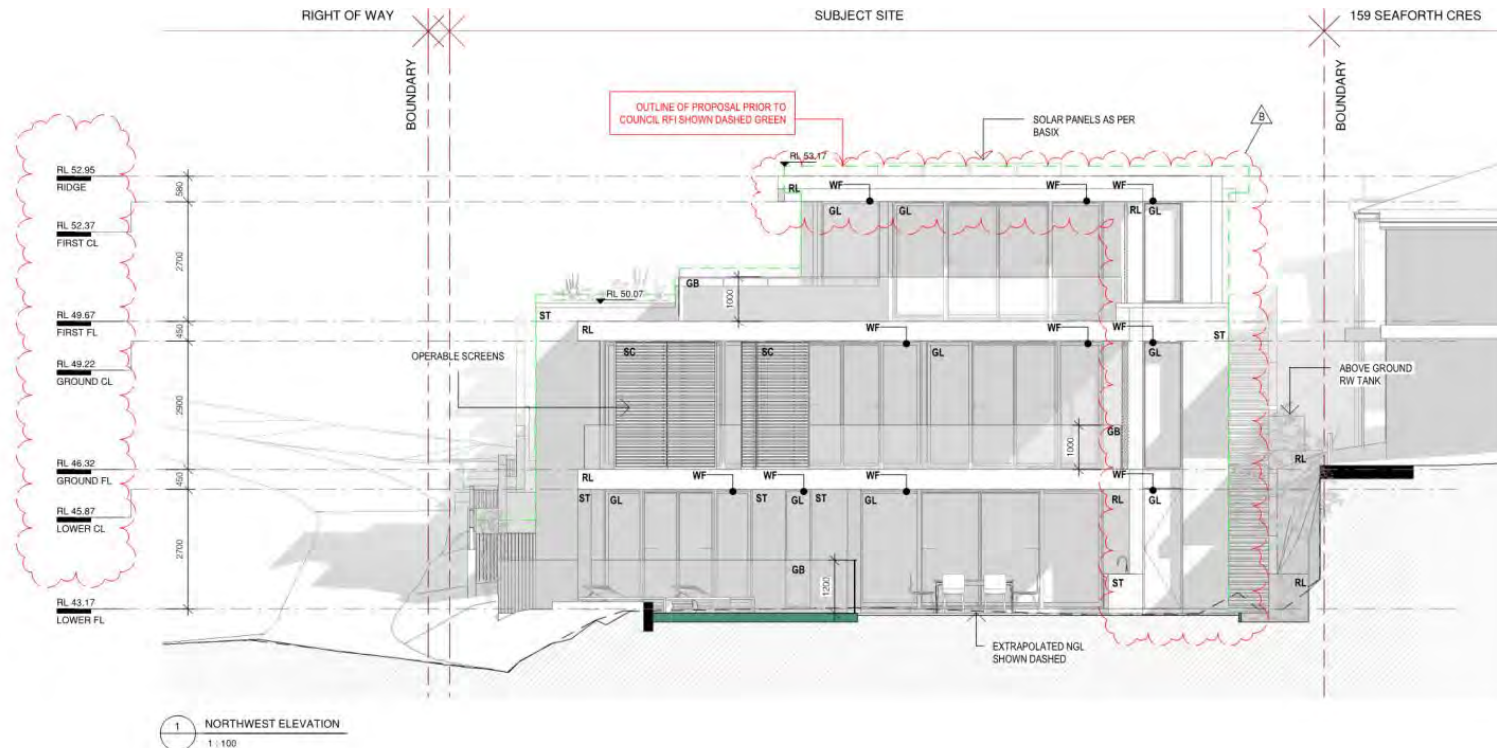
ADDITIONAL INFO - NOT FOR CONSTRUCTION

SMOKE DETECTOR WASHING MACHINE DRYER SKYLIGHT NEW WORK SHOWN HATCHED	WM DRY SL	CLIENT MACRI ADDRESS 159A SEAFORTH CRES SEAFORTH NSW 2092	SCALE: @ A3 1 : 100 DRAWING TITLE SOUTHWEST ELEVATION	DRAWN BY: LC DESIGNED BY: RU TRUE NORTH: REV DATE: 31/10/2023 DRAWING NO: A503

MATERIALS LEGEND
(REFER TO DRAWING)

BR - FACE BRICK
RL - RENDERED WALLS - LIGHT
ST - STONE CLADDING
TC - TIMBER CLADDING
TB - TIMBER LOOK BATTENS
SC - METAL SCREENS
PO - PEBBLE ROOF

WF - WINDOW FRAMES
GL - GLASS
SO - SOFFIT
RO - ROOF
GB - GLASS BALUSTRADE
DR - DRIVEWAY



ADDITIONAL INFO - NOT FOR CONSTRUCTION



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**UPDATED CLAUSE 4.6 VARIATION REQUEST – HEIGHT OF
BUILDING**

16.11.23

1.0 Introduction

This written request is made pursuant to the provisions of Clause 4.6 of the Manly Local Environmental Plan 2013 (the LEP). A variation is sought to the height of buildings development standard of Clause 4.3(2) of the LEP, in relation to proposed development for a new dwelling house, at 159A Seaforth Crescent, Seaforth.

This updated variation request has been prepared having regard to the following architectural plans:

DRAWING LIST

A101	BASIX REQUIREMENTS	A	23/06/2023
A201	SITE ANALYSIS	A	23/06/2023
A202	SITE PLAN	B	31/10/2023
A203	DEMOLITION PLAN	A	23/06/2023
A301	LOWER GROUND FLOOR PLAN	B	31/10/2023
A302	GROUND FLOOR PLAN	B	31/10/2023
A303	FIRST FLOOR PLAN	B	31/10/2023
A304	ROOF PLAN	B	31/10/2023
A305	POOL PLAN	A	23/06/2023
A401	SECTION AA	B	31/10/2023
A402	SECTION BB	B	31/10/2023
A501	NORTHEAST ELEVATION	B	31/10/2023
A502	SOUTHEAST ELEVATION	B	31/10/2023
A503	SOUTHWEST ELEVATION	B	31/10/2023
A504	NORTHWEST ELEVATION	B	31/10/2023
A601	CALCULATIONS	B	31/10/2023
A602	CONSTRUCTION MANAGEMENT PLAN	A	23/06/2023
A701	SHADOW DIAGRAMS - JUNE 21 - 9AM	B	31/10/2023
A702	SHADOW DIAGRAMS - JUNE 21 - 10AM	B	31/10/2023
A703	SHADOW DIAGRAMS - JUNE 21 - 11AM	B	31/10/2023
A704	SHADOW DIAGRAMS - JUNE 21 - 12PM	B	31/10/2023
A705	SHADOW DIAGRAMS - JUNE 21 - 1PM	B	31/10/2023
A706	SHADOW DIAGRAMS - JUNE 21 - 2PM	B	31/10/2023
A707	SHADOW DIAGRAMS - JUNE 21 - 3PM	B	31/10/2023
A708	ELEVATIONAL SHADOWS 01 - WINTER SOLSTICE	B	31/10/2023
A709	ELEVATIONAL SHADOWS 02 - WINTER SOLSTICE	B	31/10/2023
A720	HEIGHT PLANE ANALYSIS 01	B	31/10/2023
A721	EXCAVATION AND FILL PLAN	A	23/06/2023
A801	PERSPECTIVE 01	B	31/10/2023
A802	PERSPECTIVE 02	B	31/10/2023
A803	PERSPECTIVE 03	B	31/10/2023
A901	MATERIALS & WINDOW SCHEDULES	B	31/10/2023

This exception statement has also been prepared having regard to the Land and Environment Court judgments in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *Rebel MH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112, *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115, *Tenacity Consulting Consulting v Warringah* [2004] NSWLEC 140 and *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582.

2.0 Manly Local Environmental Plan 2013 (“MLEP”)

2.1 Clause 4.4 – Height of buildings

Clause 4.3 (2) of Manly Local Environmental Plan 2013(MLEP 2013) relates to maximum permitted building height for a site and refers to the Height of Buildings Map. The relevant map identifies the subject site as having a maximum height of 8.5m. Building height is defined as:

Building Height (or **height of building**) means—

- a) *in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- b) *in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,*

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

The maximum height control is a “development standard” to which exceptions can be granted pursuant to clause 4.6 of the LEP.

2.3 The Purpose of Clause 4.6

The purpose, or objective of Clause 4.6 is twofold, as follows:

“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....”*

Clause 4.6 therefore acknowledges that despite the intent behind a development standard, certain circumstances may warrant an alternative solution where that solution can deliver an appropriate planning outcome without rigid application of the controls. Accordingly, a significant body of case law has developed around Clause 4.6 (and will continue to evolve).

2.4 The Current Context to Varying a Development Standard

This request has been prepared having regard to the principles and matters arising out of the following guideline judgements on Clause 4.6 variations:

- *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*
- *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*
- *Al Maha Pty Ltd Vs Huajun Investments Pty Ltd [2018] NSWCA 137*
- *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*
- *Moskovich v Waverley Council [2016] NSWLEC 1015*

- *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 (and its predecessor, *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386).
- *Wehbe v Pittwater Council* [2007] NSWLEC 827

It is noted that the above judgments have, in effect, reaffirmed the previous judgments in respect to *Initial Action Pty Ltd* and *Micaul Holdings Pty Ltd*, which in turn, refer to the following key principles:

- That compliance with the development standard must be unreasonable or unnecessary in the circumstances of the case.
- There must be sufficient environmental planning grounds to justify contravening the development standard.
- The applicant's written request must adequately address the matters required to be demonstrated by Clause 4.6(3).
- The proposed development must 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 to be carried out.
- Concurrence to the variation is required by the Secretary.

Importantly, in *Initial Action*, Preston CJ said at [88]:

'Clause 4.6 does not directly or indirectly establish this test (for a better planning outcome). The requirement ...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.'

This report will address the provisions of Clause 4.6 contained within the Manly Local Environmental Plan 2013. Clause 4.6 Exceptions to Development Standards establishes the framework for varying development standards applying under the MLEP 2013. Subclause 4.6(3)(a) and 4.6 (3)(b) state that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

- 4.6(3)(a) *That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.*
- 4.6(3)(b) *That there are sufficient environmental planning grounds to justify contravening the development standard.*

Subclause 4.6(4) mandates that development consent must not be granted for a development that contravenes a development standard unless the consent authority satisfied:

- The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).*
- 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.*

Accordingly, this report provides an assessment of the height of buildings variation in accordance with Clause 4.6, with regard to the recent NSW Land and Environment Court (NSW LEC) judgments and the relevant sections of:

- *Appendix 3 of NSW Department of Planning and Environment's publication, "Varying Development Standards: A Guide" (August 2011).*
- *The principles identified in the decision of Justice Lloyd in Winten v North Sydney Council.*
- *The five-part test was established in the decision of Justice Preston in Wehbe V Pittwater [2007] NSW LEC 827 to determine whether compliance with a development standard is unreasonable or unnecessary.*

3.0 Nature of Variation

3.1 What is the applicable Planning Instrument and Zoning?

The Manly Local Environmental Plan 2013 is the environmental planning instrument that applies to the site. The site is zoned R2 – Low Density Residential under MLEP 2013, in accordance with the relevant Land Zoning Map.

3.2 What are the Zone objectives?

The objectives of the R2 Low Density Residential zone are:

- *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 following comments address the objectives of the R2 Low Density Residential Zone:

- The proposal for a new two storey and part three storey dwelling house is consistent with this objective of the zone because it provides for the ongoing needs of the community for a new single dwelling house in this low-density residential zone.
- The height and bulk and scale of the building also has regard for the topography and the amenity of the adjoining dwelling houses.

3.3 What is the standard being varied?

The standard being varied is the 8.5m maximum 'Height of Buildings' development standard prescribed by Clause 4.3 Height of Buildings of the MLEP 2013.

3.4 Is the standard to be varied a development standard?

Yes, the Clause 4.3 Height of Buildings standard is a development standard in accordance with the definition contained in Section 1.4 of the Environmental Planning & Assessment Act 1979 (EP&A Act) and not a prohibition.

3.5 What is the underlying object or purpose of the standard?

The objectives of Clause 4.3 are as follows:

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

Refer to **Table 4.1** within this report, which assesses the proposal against the relevant objectives of the Clause 4.3.

3.7 What is the proposed numeric variation of the development standard in the development application?

The highest part of the building is the north western edge of the roof over the first floor balcony which breaches the height standard by a maximum of 850mm (10%) as depicted on section AA an extract of which is at Figure 1.

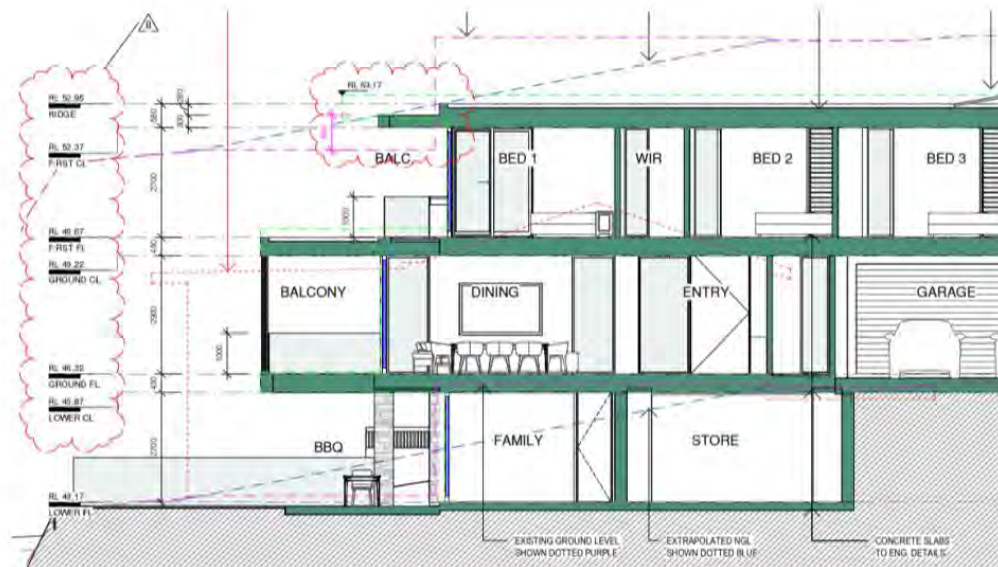


Figure 1 - Plan extract showing the extent of building height breaching elements above ground level existing (shown by pink line)

4.0 Assessment

An assessment of the building height variation is provided below in accordance with the requirements of Clause 4.6. In addition, this variation has also been prepared in accordance with the Guidelines, which identifies matters to be addressed in an application to vary a development standard and the matters identified in the Guidelines are consistent with the SEPP 1 objection principles identified in the decision of Justice Lloyd in *Winten v North Sydney Council* outlined below:

- Is the planning control in question a development standard?*
- What is the underlying object or purpose of the standard?*
- Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the EP&A Act 1979?*
- Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?*
- Is a development which complies with the development standard unreasonable or unnecessary?*
- Is the objection well founded?*

4.1 Is strict compliance with the Development Standard Unreasonable or Unnecessary in the Circumstances of the Case

Yes. In this instance, the strict numerical compliance with the development standard for Height of Buildings is unreasonable and unnecessary given the circumstances of the case discussed further below.

In determining what constitutes *unreasonable or unnecessary*, it is a well-established practice to ask a series of questions, as follows:

- a) *Would the proposal, despite numerical non-compliance, be consistent with the relevant environmental or planning objectives?*
- b) *Is the underlying objective or purpose of the standard not relevant to the development thereby making compliance with any such development standard is unnecessary?*
- c) *Would the underlying objective or purpose be defeated or thwarted were compliance required, making compliance with any such development standard unreasonable?*
- d) *Has Council by its own actions, abandoned or destroyed the development standard, by granting consent that depart from the standard, making compliance with the development standard by others both unnecessary and unreasonable?*
- e) *Is the “zoning of particular land” unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable and unnecessary as it applied to that land?*

Consequently, compliance with that development standard is unnecessary and unreasonable. On 19 February 2016, Preston CJ re-confirmed the approach to the “unreasonable or unnecessary” test in Clause 4.6 adopted by Morris C in NSW LEC judgement. Consistent with that decision and in response to the above questions, it is submitted that strict compliance with the maximum development standard prescribed by Clause 4.3 - Height of Buildings of WLEP 2011 would be unreasonable or unnecessary in this case, for the following reasons that are specific to this site and proposal:

- The proposal is consistent with the relevant environmental and planning objectives pertaining to the height standard and the R2 zone.
- Although the underlying objectives for the height standard are valid and relevant matters for consideration, it is contended that strict numerical compliance will not achieve any greater public benefit than the proposal and would thwart a better outcome to and from the development.
- The height breach is constrained to a small portion of the first floor awning. As the non-compliance is caused by the sudden drop in topography on the site, it is not discernible feature of the building from the street front.
- The proposal involves the construction of a new low density residential dwelling house that will provide a well-designed contemporary dwelling which will upgrade the housing stock in the locality. The façade and setbacks are compatible with variety of architectural styles and character of other dwellings in the streetscape and will make a positives contribution to the future character of the locality.
- The majority of the built form will be compliant with the 8.5m height limit. The upper level of the proposed development maintains a consistency in the built form. The non-compliance roof is centrally located within the building footprint and therefore, results in negligible impacts with regard to streetscape character and overshadowing.

- The difference in the extent of impact between a development that achieves strict numerical compliance is negligible. The variations would not result in any material overshadowing, privacy, view impacts, visually intrusive or acoustic impacts on surrounding properties or public domains. These impacts have been demonstrated to be within anticipated limits.
- With respect to the appropriateness of the land's zoning, we note that this is appropriate for the site, as well as the development and Council's aspirations for the desired future character of the surrounding area and accordingly, we do not press this point.

Table 4.1 | Assessment of the proposal against the objectives of Clause 4.3 of the WLEP 2011

Objective	Comment	Consistent
To provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,	The height and bulk and scale of the new house will maintain compatibility with the varied building height and roof forms in the locality. The house will not be highly visible from Seaforth Crescent, and it is only the upper level of the building that will be visible from some vantage points.	Yes
To control the bulk and scale of buildings,	The bulk and scale of the building is acceptable and is minimised by the siting of the new house in a similar location to the existing house but with curved wall elements that provide wide setbacks to boundaries and a deep setback from Seaforth Crescent. The low profile flat and sloping roofs and natural materials and finishes also assist in controlling bulk and scale.	Yes
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),	The elements of the new house and the roof, where the breach of the height of buildings standard occurs will not affect views to and from Middle Harbour from the adjoining properties. There are no public views over the site or the proposed house.	Yes

iii) views between public spaces (including the harbour and foreshores),		
To provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,	The site has a north to south orientation similar to the adjoining properties. Shadow diagrams were prepared for 9am, 12noon and 3pm, on 21 June and submitted with the development application. The analysis confirms that the proposal will involve only a minor increase in overshadowing of the adjoining houses in the morning and afternoon period and solar access will be maintained to north facing living rooms and private open space areas in accordance with the solar access criteria of the DCP.	Yes
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 not located in a recreation zone or environmental protection zone. There would be no purpose served by requiring strict compliance with the standard because the height of the dwelling where the breach the height of buildings standard occurs does not contribute to the house being excessive in height and bulk and scale when viewed from adjoining properties, from the street and from a distance from Middle Harbour. There will also be no adverse impact on the amenity of the adjoining and adjacent properties and the environmental quality and scenic amenity of the locality.	

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

In forming a conclusion as to whether there are sufficient environmental planning grounds to justify the variation to the development standard, Council's attention is also directed to [88]-[90] in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118. The Court held that Clause 4.6 does not establish a test to determine if a variation results in a better outcome – merely that there are sufficient environmental planning outcomes. Circumstances where a better outcome has been achieved has been discussed in the above assessment. Part 4.1 provides a summary of the circumstances where a better outcome is achieved to and from the development.

Accordingly, it is considered that in the circumstances of the case, there are sufficient environmental planning grounds to justify the variation of the development standard, namely:

- The variation is minor and will not be perceivable from the public domain as they relate to minor section relating to the roof over the balcony, considerably setback from building elevations and within landscaped surrounds.
- There will be no significant adverse amenity impacts on the surrounding properties resulting from the variation to the roof line for reasons stated in the above point.
- The proposal remains consistent with both the objectives of the zone and the development standard, despite the variation and is consistent with the test for being unreasonable or unnecessary.
- The proposal satisfies the objectives of the R2 Low Density Residential zone and the objectives of the building height standards, having regard to the particular nature of the development and the particular circumstances of the site.
- Notwithstanding its previous abandonment by Council, the non-compliance occurs overall constraints of the site and therefore, is justifiable as a better overall planning outcome.
- The non-compliance with the standard will not add any discernible and undue bulk/scale massing, size, which will adversely impact desired future character of the locality in comparison to a strictly compliant form.
- The non-compliance with the standard does not result in a scale of building that is incongruous with the existing or desired future character of the surrounding built environment.
- An awning structure which will provide protection from the harsh western sun.
- A better planning outcome is facilitated as discussed above.
- Strict compliance will hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act.

I also note I note that the prior excavation of the site within the footprint of the existing building distorts the height of buildings development standard plane overlaid above the site when compared to the natural undisturbed topography of the land. When the original undisturbed levels of the site are interpolated across the building footprint the proposed development would only breach the height standard by 678mm or 7.9% as depicted on Section AA.

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

Whilst strict compliance could be achieved by removing the awning over the upper level balcony, such outcome would not represent good design and would result in an inferior amenity outcome for occupants given the sun protection that the non-compliant awning element provides from the harsh western sun. Such outcome would thwart compliance with objective 1.3(g) of the Act. Such outcome would also not represent the orderly development of the land given the reduced design quality and amenity afforded should strict compliance be enforced and to that extent would also thwart compliance with objective 1.3(c) of the Act.

For these reasons, the proposed variation to the development standard has sufficient environmental planning grounds to justify the contravention in the circumstances specific to the case.

4.4 Is the variation well founded?

The variation is well founded, as demonstrated in the preceding sections of this submission. Compliance with the standard is unreasonable as the development does not contravene the objects specified within 5(a)(i) and (ii) of the EP&A Act, the development standard under the MLEP 2013 and the R2 Low Density Residential zone. A development that strictly complies with the standard is unnecessary in this circumstance, as no appreciable benefits would result from restricting the building to the height limit. There are negligible implications to the surrounding properties, in relation to overshadowing, visual privacy, or view impacts and therefore complying with the MLEP 2013 development standard for Height of Buildings is unreasonable and unnecessary.

Through addressing the constraints of the site and the surrounding immediate locality, a better planning outcome and built form has been achieved.

4.5 Is the proposal in the public interest?

Clause 4.6(4)(a)(i) has been addressed in the previous section of this written request. The objectives of the standard (4.6(4)(a)(ii)) as well as the objectives of the R2 Low Density Residential Zone have been previously addressed and are adopted (rather than repeated) for the purposes of this section of the written request.

The proposed development will be in the public interest because the development achieves each of the relevant objectives of the height of buildings standard and the objectives of the zone and is therefore consistent with them.

The proposal for a dwelling house is permissible in the zone with development consent. The requirement in Clause 4.6(4)(b) is also met, as outlined as follows in relation to the concurrence of the Director-General.

5. Conclusion

This Clause 4.6 submission satisfies the provisions of 4.6 (3)(a) and (b) and 4.6 (4)(a)(i) of Manly Local Environmental Plan 2013. It has been demonstrated that compliance with the Height of Buildings development standard under Clause 4.3 Height of Buildings, is both unnecessary and unreasonable in the circumstances of this case and there are sufficient planning grounds to justify contravening the standard. In addition, the variation has sound environmental planning grounds and will be in the public interest, hence, should be supported accordingly. The proposed variation to Clause 4.3 is numerically minor and will not compromise the integrity of the development as a whole.

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

Boston Blyth Fleming Pty Limited

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Director

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ANNEXURE 2

CLAUSE 4.6 VARIATION REQUEST – FLOOR SPACE RATIO

1.0 Introduction

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

2.0 Manly Local Environmental Plan 2013 (“MLEP”)

2.1 Clause 4.4 – Floor space ratio

Pursuant to Clause 4.4 MLEP 2013 the maximum FSR for development on the site is 0.4:1 representing a gross floor area of 271 square metres. The stated objectives of this clause are:

- (a) *to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*
- (b) *to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
- (c) *to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
- (d) *to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
- (e) *to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

It has been determined that the proposal, result in a total gross floor area on the site of 299.6 square metres. This represents a floor space ratio of 0.44:1 and therefore non-compliant with the FSR standard by 28.6 square metres or 10.5%.

I note that clause 4.1.3 of Manly Development Control Plan 2013 contains FSR exemption provisions applicable to land where the site area is less than the minimum Lot size required on the LEP Lot size map provided the relevant LEP objectives and the provisions of the DCP are satisfied.

The Lot size map identifies the subject site as being in sub zone “R” in which a minimum Lot area of 750m² is required. The site having an area of only 677.5m² is

well below the minimum Lot area provision and accordingly the clause 4.1.3 Manly DCP FSR variation provisions apply.

Clause 4.1.3.1 states that the extent of any exception to the LEP FSR development standard pursuant to clause 4.6 of the LEP is to be no greater than the achievable gross floor area for the lot indicated in Figure 30 of the DCP. We confirm that pursuant to Figure 30 the calculation of FSR is to be based on a site area of 750m² with an achievable gross floor area of 300m².

In this regard, the 299.6m² of gross floor area proposed, representing an FSR of 0.4:1 (based on 750m²), is below the maximum prescribed gross floor area of 300m² and as such complies with the DCP variation provision. We note that such provision contains the following note:

Note: FSR is a development standard contained in the LEP and LEP objectives at clause 4.4(1) apply. In particular, Objectives in this plan support the purposes of the LEP in relation to maintaining appropriate visual relationships between new development and the existing character and landscape of an area as follows:

- | | |
|--------------|---|
| Objective 1) | <i>To ensure the scale of development does not obscure important landscape features.</i> |
| Objective 2) | <i>To minimise disruption to views to adjacent and nearby development.</i> |
| Objective 3) | <i>To allow adequate sunlight to penetrate both the private open spaces within the development site and private open spaces and windows to the living spaces of adjacent residential development.</i> |

As the proposed GFA/ FSR complies with clause 4.1.3.1 MDCP numerical provision it is also “deemed to comply” with the associated objectives as outlined which, if complied with, demonstrate the maintenance of an *appropriate visual relationships between new development and the existing character and landscape of an area*.

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of MLEP provides:

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

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*

- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

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

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

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

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

Clause 4.6(2) of MLEP provides:

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

This clause applies to the clause 4.4 Floor Space Ratio Development Standard.

Clause 4.6(3) of MLEP provides:

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

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

The proposed development does not comply with the floor space ratio provision at 4.4 of MLEP which specifies a maximum FSR however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

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

Clause 4.6(4) of MLEP provides:

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) *the concurrence of the Director-General has been obtained.*

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

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

Under cl 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 5th May 2020, attached to the Planning Circular PS 20-002 issued on 5th May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of MLEP provides:

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

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 4.4 of MLEP from the operation of clause 4.6.

3.0 Relevant Case Law

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

- 17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
- 18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
- 19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*

20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51].*

The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.

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

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

1. Is clause 4.4 of MLEP a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.4 and the objectives for development for in the zone?

4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.4 of MLEP?

4.0 Request for variation

4.1 Is clause 4.4 of MLEP a development standard?

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

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

Clause 4.4 MLEP prescribes a floor space height provision which seeks to limit the bulk, scale and density of the development. Accordingly, clause 4.4 MLEP is a development standard.

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

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

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

Consistency with objectives of the floor space ratio standard

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

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

Response: This objective relates to streetscape character and in this regard the proposal presents a predominantly 2 storey stepped building height to Seaforth Crescent with the stepped building form acknowledging (consistent with) the topographic landscape of the land which falls away towards its northern boundary. Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191,

I have formed the considered opinion that most observers would not find the bulk and scale of the proposed development, as viewed from Seaforth Crescent, to be offensive, jarring or unsympathetic in a streetscape context.

This objective is satisfied, notwithstanding the non-compliant FSR proposed, as the bulk and scale of development is consistent with the existing and desired streetscape character.

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

Response: Having regard to clause 4.1.3.1 Manly DCP FSR provisions, which inform the 299.6m² of gross floor area proposed, representing an FSR of 0.44:1 (based on 750m²), is below the maximum prescribed gross floor area of 300m² and as such complies with the DCP variation provision applicable to undersized allotments. We note that Objective 1 of the DCP provision, which relates to establishing building density and bulk, as reflected by FSR, in relation to site area (undersized allotments) is similar to this LEP objective namely:

- Objective 1) To ensure the scale of development does not obscure important landscape features.*

As previously indicated the proposed FSR complies with the DCP numerical FSR control applicable to undersized allotments and is therefore deemed to comply with this objective.

That said, neither the LEP or DCP identify and important landscape or townscape features either on or within proximity of the subject site. My own observations did not identify and landscape or townscape features that I would consider important in terms of their visual significance.

I am satisfied that the proposal, notwithstanding the FSR non-compliance, achieves this objective as the building density and bulk, in relation to a site area, satisfies Objective 1 of the clause 4.1.3.1 DCP provision applicable to undersized allotments, with the development not obscuring any important landscape and townscape features.

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

Response: This objective is the same as the primary purpose/ objective outlined at clause 4.1.3 of the DCP as confirmed in the note such provision namely:

Note: FSR is a development standard contained in the LEP and LEP objectives at clause 4.4(1) apply. In particular, Objectives in this plan support the purposes of the LEP in relation to maintaining appropriate visual

relationships between new development and the existing character and landscape of an area as follows:

Objective 1) To ensure the scale of development does not obscure important landscape features.

Objective 2) To minimise disruption to views to adjacent and nearby development.

Objective 3) To allow adequate sunlight to penetrate both the private open spaces within the development site and private open spaces and windows to the living spaces of adjacent residential development.

As the proposed GFA/ FSR complies with clause 4.1.3.1 MDCP numerical provision it is also “deemed to comply” with the associated objectives as outlined which, if complied with, demonstrate the maintenance of an *appropriate visual relationships between new development and the existing character and landscape of an area.*

That said, it has previously been determined that the proposal achieves objective (a) of the clause 4.4 MLEP FSR standard namely to *ensure the bulk and scale of development is consistent with the existing and desired streetscape character.* Accordingly, I am satisfied that the development, notwithstanding the FSR non-compliance, maintains an appropriate visual relationship between new development and the existing built form character of the area.

In relation to landscape character, the application does not require the removal of any significant trees or vegetation with a building footprint maintained which is compliant with the total open space and landscaped area MDCP controls. The building will sit within a landscaped setting. The application is accompanied by a schedule of materials and finishes which will enable the development to blend into the vegetated escarpment which forms and backdrop to the site. An appropriate visual relationship between new development and the existing landscape of the area is maintained.

I am satisfied that the development, notwithstanding its FSR non-compliance, achieves the objective as it maintains an appropriate visual relationship between new development and the existing character and landscape of the area.

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

Response: In responding to this objective. I have adopted views, privacy, solar access and visual amenity as environmental factors which contribute to the use and enjoyment of adjoining public and private land.

Views

The assessment in relation to view loss has found that the non-compliance with the FSR will not affect views to and from Middle Harbour from the adjoining properties. The ground floor level of the new house has also been positioned so that wide side setbacks are maintained and the projection to the north and northeast and northwest is contained within and in some areas setback further from the rear and the outer corners of the existing building, to maintain view lines and reduce visual bulk from neighbouring properties.

There are no public views over the site or the proposed house.

Having reviewed the detail of the application we have formed the considered opinion that a view sharing scenario is maintained between adjoining properties in accordance with the principles established in *Tenacity Consulting Pty Ltd v Warringah Council* [2004] NSWLEC140 and *Davies v Penrith City Council* [2013] NSWLEC 1141.

Notwithstanding the non-compliant FSR, the proposal achieves the objective of minimising view impact as demonstrated by the view sharing outcome achieved.

Privacy

Having regard to clause 4.1.3.1 Manly DCP FSR provisions, which inform the 299.6m² of gross floor area proposed, representing an FSR of 0.44:1 (based on 750m²), is below the maximum prescribed gross floor area of 300m² and as such complies with the DCP variation provision applicable to undersized allotments. We note that the privacy objectives at clause 3.4.2 are also referenced in relation to these provisions namely:

See also objectives for privacy at paragraph 3.4.2 of this plan.

3.4.2 Privacy and Security

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;*
- mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

As previously indicated the proposed FSR complies with the DCP numerical FSR control applicable to undersized allotments and is therefore deemed to comply with the clause 3.4.2 privacy objectives to the extent that it can be demonstrated that the development *minimises loss of privacy to adjacent and nearby development.*

Notwithstanding, we note that all surrounding properties are orientated to the north to take advantage of views towards Middle Harbour. This spatial relationship prevents direct overlooking between the living areas of these properties with a degree of mutual overlooking of private open space areas anticipated where all properties are orientated to take advantage of views.

Given the spatial separation maintained between the balance of surrounding properties, and the primary orientation of living areas to the north towards available views, I am satisfied that the design, although non-compliant with the FSR standard, minimises adverse environmental impacts in terms of privacy and therefore achieves this objective.

Solar access

The accompanying shadow diagrams demonstrate that the building, although non-compliant with the FSR standard, will not give rise to any unacceptable shadowing impact to the adjoining residential properties with compliant levels of solar access maintained.

Visual amenity/ building bulk and scale

As indicated in response to objective (a), I have formed the considered opinion that the bulk and scale of the building is contextually appropriate with the floor space appropriately distributed across the site to achieve acceptable streetscape and residential amenity outcomes.

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

I have formed the considered opinion that the building, notwithstanding the FSR non-compliance, achieves the objective through skilful design that minimises adverse environmental impacts on the use and enjoyment of adjoining land and the public domain.

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

Response: This objective is not applicable.

Having regard to the above, the proposed building form which is non-compliant with the FSR standard will achieve the objectives of the standard to at least an equal degree as would be the case with a development that complied with the FSR standard. Given the developments consistency with the objectives of the FSR standard strict compliance has been found to be both unreasonable and unnecessary under the circumstances.

Consistency with zone objectives

The subject site is zoned R2 Low Density Residential pursuant to the provisions of MLEP. Dwelling houses are permissible in the zone with the consent of council. The stated objectives of the zone are as follows:

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

Response: The development provides new dwelling to replace the existing dwelling on site which will provide for the housing needs of the community within a low density residential environment. The proposal is consistent with this objective.

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

Response: N/A

The proposed works are permissible and consistent with the stated objectives of the zone.

The non-compliant development, as it relates to FSR, demonstrates consistency with objectives of the R2 Low Density Residential zone and the FSR standard objectives. Adopting the first option in *Wehbe* strict compliance with the FSR standard has been demonstrated to be is unreasonable and unnecessary.

4.2B Clause 4.6(4)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

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

24. *The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard".*

The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.

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

Sufficient environmental planning grounds

I have formed the opinion that sufficient environmental planning grounds exist to justify the variation including the compatibility of the height, bulk and scale of the development, as reflected by floor space, with the built form characteristics established by adjoining development and development generally within the site's visual catchment.

Further, the variation provisions contained at clause 4.1.3.1 of Manly DCP reflect an acceptance that the FSR standard on undersized allotments does not provide for the orderly and economic use and development of the land and in my opinion represents an abandonment of the FSR standard on undersized allotments. The proposal satisfies such provisions.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposal promotes the orderly and economic use and development of land (1.3(c)).
- The development represents good design (1.3(g)).
- The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(h)).

It is noted that in *Initial Action*, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. *The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment).*

Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

There are sufficient environmental planning grounds to justify contravening the development standard.

4.3 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 4.4 and the objectives of the R2 Low Density Residential zone

The consent authority needs to be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

Preston CJ in *Initial Action* (Para 27) described the relevant test for this as follows:

"The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii)."

As demonstrated in this request, the proposed development it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

4.4 Secretary's concurrence

By Planning Circular dated 5th May 2020, the Secretary of the Department of Planning & Environment advised that consent authorities can assume the concurrence to clause 4.6 request except in the circumstances set out below:

- Lot size standards for rural dwellings.
- Variations exceeding 10%; and
- Variations to non-numerical development standards.

The circular also provides that concurrence can be assumed when an LPP is the consent authority where a variation exceeds 10% or is to a non-numerical standard, because of the greater scrutiny that the LPP process and determination s are subject to, compared with decisions made under delegation by Council staff.

Concurrence of the Secretary can therefore be assumed in this case.

5.0 Conclusion

Pursuant to clause 4.6(4)(a), the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

As such, I have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of an FSR variation in this instance.

Boston Blyth Fleming Pty Limited



Greg Boston
B Urb & Reg Plan (UNE) MPIA
Director

ITEM 3.6	DA2023/1253 - 61 HILLTOP ROAD AVALON BEACH - CONSTRUCTION OF A SECONDARY DWELLING AND ASSOCIATED WORKS
REPORTING MANAGER	Adam Richardson
TRIM FILE REF	2023/801023
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 DA2023/1253 for Construction of a secondary dwelling and associated works on land at Lot 42 DP 557934, 61 Hilltop Road AVALON BEACH, subject to the conditions set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/1253
Responsible Officer:	Phil Lane
Land to be developed (Address):	Lot 42 DP 557934, 61 Hilltop Road AVALON BEACH NSW 2107
Proposed Development:	Construction of a secondary dwelling and associated works.
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	Yes
Owner:	Lynne Alexandra Douglas
Applicant:	Lynne Alexandra Douglas
Application Lodged:	28/09/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New second occupancy
Notified:	04/10/2023 to 18/10/2023
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 25.5%
Recommendation:	Approval
Estimated Cost of Works:	\$ 420,000.00

EXECUTIVE SUMMARY

This development application seeks consent for construction of a two storey building that contains a secondary dwelling at the lower ground floor and a triple garage at the upper ground floor, including associated site works on the subject site.

The development application is referred to the Development Determination Panel (DDP) due to a breach of the building height development standard by more than 10%. The building height of the proposed secondary dwelling house has been measured at 6.9 metres which represents a variation of 25.5% to the maximum prescribed building height of 5.5 metres pursuant of Clause 4.3 Height of buildings of Pittwater Local Environmental Plan 2014 (PLEP 2014).

The variation to the development standard has been supported by a written clause 4.6 variation request for the non-compliance with height standard. The variation arises from the steep sloping site underneath the proposed secondary dwelling based.

The application was notified in accordance with Council's Community Participation Plan to the adjoining properties. One (1) submission have been received raising issues over weed infestation, geotechnical matters and ecological remediation which have been addressed and suitable conditioned.

Despite being non-compliant with the prescribed building height requirement for secondary dwelling as set out in the LEP, the proposal represents a built form compatible with the prevailing character of the locality and would not result in unreasonable amenity impacts to neighbouring properties. The non-compliant elements of the proposal with the front building line and building envelope controls of the DCP are acceptable (subject to the increased northern side setback to the garage level via recommended condition) will be commensurate with the built form of the existing dwelling and surrounding built form.

This report concludes with a recommendation that the DDP grant approval to the development application, subject to recommended conditions.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for a two (2) storey building with a three (3) car garage on the top floor and the secondary dwelling on the lower floor level.

The secondary dwelling has the following layout:-

- Living/kitchen
- Bedroom
- Bathroom
- Rear porch
- Front timber deck
- Stairs leading up to the existing concrete driveway and new garage
- Stairs and pathway down to the Hilltop Road

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;

- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 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 - 7.10 Essential services
Pittwater 21 Development Control Plan - B8.1 Construction and Demolition - Excavation and Landfill
Pittwater 21 Development Control Plan - C1.19 Incline Passenger Lifts and Stairways
Pittwater 21 Development Control Plan - D1.8 Front building line
Pittwater 21 Development Control Plan - D1.11 Building envelope

SITE DESCRIPTION

Property Description:	Lot 42 DP 557934 , 61 Hilltop Road AVALON BEACH NSW 2107
Detailed Site Description:	The subject site consists of one (1) allotment located on the eastern side of Hilltop Road. The site is irregular in shape with a frontage of 20.42m along Hilltop Road and a depth of 60.68m along the northern side boundary and 59.62m along the southern side boundary with the rear boundary measuring 14.14m. The site has a surveyed area of 1036m². The site is located within the C4 Environmental Living zone and accommodates a part single and double storey dwelling house with a right of carriageway (driveway) which services the subject site and a number of other dwellings houses. The site is quite steep with front portion having a slope over 60% grade and middle to rear portion having a slope over of 50% grade. The site has a number of native and exotic species of plants, shrubs and trees. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by single and double storey dwellings with associated outbuildings/structures and landscaped gardens.

Map:



SITE HISTORY

BC0149/07 - Coppers log retaining wall adjacent to the driveway and small log garden walls in the front of the allotment between the dwelling and Hilltop Road issued 28 August 2007

PLM2021/0341 - Construction of a Garage and Secondary Dwelling meeting held 8 February 2022

"The proposal for a secondary dwelling and garage above is supported in principle, subject to the applicant demonstrating that significant trees are able to be retained, the submission of a thorough Clause 4.6 variation request and refinement and reduction of the deck on the western elevation to respond to the street character.

The applicant is encouraged to incorporate the feedback within these notes prior to lodgement."

DA2022/1955 - Construction of a secondary dwelling and garage application was withdrawn on 8 February 2023 after RFI letter sent by Council on 11 January 2023 requesting the following:-

- Landscaping - impacts on trees
- Bushland and Biodiversity - BDAR required
- Amended Clause 4.6 variation and plans to address variation for the secondary dwelling
- Updated geotechnical report
- Clause D1.14 Landscaped Area - Environmentally Sensitive Land of Pittwater 21 Development Control Plan - non compliance

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(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 recommended condition of consent. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested was requested by Council's Biodiversity Team which required a Vegetation Management Plan (VMP) and amendment to the Biodiversity Development Assessment Report (BDAR) which was submitted by the applicant on 27 November 2023. <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a recommended condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a recommended condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a recommended condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.

Section 4.15 Matters for Consideration	Comments
	(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 04/10/2023 to 18/10/2023 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 1 submission/s from:

Name:	Address:
Ms Jane Roberta Prior	74 Chisholm Avenue AVALON BEACH NSW 2107

The following issues were raised in the submissions:

- Landslip
- Weeds and ecological remediation

The above issues are addressed as follows:

- **Landslip**

Concerns were raised over landslip on the subject site and what Council was planning to do long term.

Comment: A geotechnical report was lodged with this application with recommendations from a geotechnical engineer in accordance with Council's Geotechnical Risk Management Policy for Pittwater. Council's Senior Development Engineer reviewed this geotechnical report and comments and conditions have been included within the recommended conditions for consideration.

It is considered that despite the development being located within geotechnical hazard area, the application has been supported with the appropriate documentation (geotechnical reports etc.) to reduce the likelihood of future landslips in these areas.

- **Weeds and ecological remediation**

The submissions raised concerns that over weed infestation on the slope on private land which runs down to the council road reserve and what ecological remediation is going to occur on the subject site.

Comment:

Amended information has been received by Council which included a Vegetation Management Plan (VMP) prepared by Ecologist and within this document included a weed management plan to treat this current weed infestation. The plan included revegetation with native plants including plants, shrubs and trees. An amended Biodiversity Development Assessment Report (BDAR) was also lodged with this additional information and both these reports have been reviewed by Council's Biodiversity Officer and suitable conditions have been included within the recommended conditions for consideration.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	Supported, subject to conditions The application seeks consent for construction of a secondary dwelling and associated works. The Arborist's Report (including Root Mapping) prepared by Seasoned Tree Consulting indicates that 1 x <i>Angophora costata</i> (T1) is required to be removed to accommodate the garage. The tree appears to have had fill placed around it previously, impacting it's health with some decay to the trunk. From a landscape perspective, no objections are raised to removal of T1 subject to replacement. However, I would defer to comments from Council's Bushland and Biodiversity section regarding the biodiversity implication of removal.

Internal Referral Body	Comments
	As the site is in C4 Zone, and the secondary dwelling is fairly elevated on the downhill side, some sort of screening or additional planting is considered to be beneficial to mitigation any visual impacts of the secondary dwelling and associated works, and protecting and enhancing the natural landscape values in the C4 Environmental Living Zone. It is recommended that a Vegetation Management Plan with weed removal and bush regeneration below the secondary dwelling would be the best outcome following stormwater and construction works (which includes steps to the bottom of the site). A VMP would seem to be more relevant to the management of the mapped area potentially impacted by the works. However, I would defer to comments from Council's Bushland and Biodiversity section regarding the provision of a VMP. At this stage from a landscape perspective, no objections are raised to removal of Tree 1 subject to replacement of 2 local native trees
NECC (Bushland and Biodiversity)	Supported, subject to conditions Additional Comments - 28/11/23 Additional information was provided to Council's Biodiversity Officer on the 27th November 2023, including the: • Amended BDAR (November 2023) • Vegetation Management Plan (VMP) (November 2023) As a result of amendments to the Vegetation Integrity Survey (VIS) plots, the Vegetation Integrity (VI) score increased from 38.1 to 50.4. Credit generation was not affected and thus 1 x Ecosystem credit for PCT 3234: Hunter Coast Lowland Spotted Gum Moist Forest is required to be retired prior to release of construction certification. Targeted surveys were conducted for a number of threatened microbats, and whilst three listed species were recorded on site, including Little Bent-winged Bat and Large Bent-winged bat, the Ecologist determined that the bats were either foraging within the site or temporarily roosting within proximity to the site due to the lack of substantial caves within the property that would be capable of supporting breeding colonies. As such, no species credits are required to be retired as a result of the proposal. The VMP is noted and is considered to provide suitable planting

Internal Referral Body	Comments
	densities post construction for revegetation to Pittwater Spotted Gum Forest. However, as stated within Council's Biodiversity Requirements for Development Applications, the VMP should have a maintenance period of no less than five years unless specified by Council and as such is required to be amended to reflect this time period. This will be conditioned accordingly. No objections in relation to biodiversity, subject to conditions. Original Comments - 9/11/23 Council's Biodiversity Referrals Team have assessed the Development Application for compliance against the following applicable provisions: • NSW Biodiversity Conservation Act 2016 • NSW Biodiversity Conservation Regulation 2017 • Pittwater LEP 2014 cl. 7.6 Biodiversity Protection • Pittwater 21 DCP cl. B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community The Development Application seeks consent for the construction of a secondary dwelling and associated works. Portions of the site are identified on the NSW 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 Offset Scheme (BOS) and the requirement for a Biodiversity Development Assessment Report (BDAR). As the proposed development is located within the BV Map and the proposal requires the removal of native vegetation, the BOS is triggered. A BDAR (Land Eco Consulting, 14/08/2023) has been prepared by an accredited assessor and submitted with the Development Application. Impacts to Native Vegetation The Arboricultural Impact Assessment (Seasoned Tree Consulting, 20/10/2022) has identified that 1 x <i>Angophora costata</i> will require removal as it is located within the proposed footprint of the new driveway. The BDAR has calculated that the proposal will require the removal of 0.02 ha of Pittwater Spotted Gum Forest which is an Endangered Ecological Community. As such, the proposal will require the retirement of 1 x Ecosystem credit for PCT 3234: Hunter Coast Lowland Spotted Gum Moist Forest. The Ecologist established only one 400m² plot (standard 20m × 20m) to assess the composition, structure and function attributes of the site. As such, the 1000m² (standard 20m × 50m) plot, was not used to assess the function attributes (number of large trees, stem size classes, tree regeneration and length of logs). The Ecologist justified the lack of 1000m² plot as the Subject Land was too small to fit the standard 20m x 50m plot. Desktop and field based

Internal Referral Body	Comments
	assessments conducted by Council's Biodiversity officer confirmed that the rear portion of vegetation within the Subject Land should be included in the 1000m² plot. If required, the plot can extend past the front boundary of the lot to encompass any adjoining vegetation. In accordance with the BAM (2020), the assessor must determine the number of large trees, tree stem size classes and tree regeneration within the 1000 m² plot. Only native tree species are recorded for these attributes. Impacts to Threatened Species The BDAR concluded that no species credits were generated by the proposal. Council's Biodiversity officer undertook an inspection of the site and identified sandstone outcropping within the eastern portion of the lot which was not identified as potential threatened species habitat within the BDAR. As such, the accredited assessor is required to either undertake appropriate targeted surveys of the species, or assume presence of the species and calculate species credits required for offsets for the following species: • <i>Miniopterus australis</i> (Little Bent-winged Bat) • <i>Miniopterus orianae oceanensis</i> (Large Bent-winged Bat) • <i>Chalinolobus dwyeri</i> (Large-eared Pied Bat) • <i>Vespadelus troughtoni</i> (Eastern Cave Bat) In addition, all relevant shapefiles are required to be uploaded to BOAMS. Vegetation Management Plan (VMP) A recommendation of the BDAR was the preparation of a Vegetation Management Plan (VMP) to guide restoration of Pittwater Spotted Gum Forest Endangered Ecological Community within the subject site. The VMP must be prepared by a suitably qualified Ecologist, and include planting densities, guidance on weed removal and canopy replacement at a ratio of 2:1 as per the recommendations of the Ecologist. The VMP is to be provided to Council's Biodiversity referrals team for review. The Ecologist is to use and reference "Guideline 3 Biodiversity Management Plan" of Council's Biodiversity Requirements for Development Applications which is available on Council's website. The BDAR is required to be amended in accordance with the comments above. Upon resubmission of the BDAR and VMP, Council's Biodiversity Referrals team will recommence assessment of the application.
NECC (Development Engineering)	Supported, subject to conditions The propose secondary dwelling is in Region 1. On-site detention is required and is shown on submitted plans. The development is

Internal Referral Body	Comments																		
	subject to geotechnical hazard and a geotechnical report has been provided. Internal driveway construction is proposed. I have no objections to the proposed development.																		
Strategic and Place Planning (Heritage Officer)	Supported, without conditions <u>Discussion of reason for referral</u> The proposal has been referred to Heritage as the subject is within the vicinity of a heritage item SHR0079 - Hy Brasil - 60-62 Chisholm Road Clareville <u>Details of heritage items affected</u> <u>Statement of Significance</u> Hy Brasil is of State significance as one of three 'organic' houses designed by Alexander Stewart Jolly in Avalon. Hy Brasil with its simple construction of stone and timber and set in its native bushland setting represents Jolly's architecture and philosophy regarding the built form and its relationship to the natural Australian landscape. (Heritage Office) <u>Physical Description</u> Hy-Brasil originally comprised a main living space with verandahs to the west and east facades and bedroom and kitchen to the south facade. Constructed of local rock faced sandstone. The house has been planned around a large central stone fireplace and the use of natural materials of stone and timber represents a distinct 'organic' design philosophy. Particular interest exists with the fireplace structure as the mantel consists of a three metre long stone slab. <u>Other relevant heritage listings</u> <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>Yes</td><td>Hy Brasil is on the register</td></tr><tr><td>National Trust of Aust (NSW) Register</td><td>Yes</td><td>Hy Brasil is on the register</td></tr><tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>Yes</td><td>Hy Brasil is on the register</td></tr><tr><td>Other</td><td>N/A</td><td></td></tr></table> <u>Consideration of Application</u> The proposal seeks consent for a garage and secondary dwelling on the subject site. This proposal follows on from the withdrawal of the previous proposal DA2022/1955 for similar items. The garage and secondary dwelling are proposed for the western end of the site, adjoining to the right of way that runs through the site. To the east is the current dwelling and vegetated land running up to the	SEPP (Biodiversity and Conservation) 2021	No		Australian Heritage Register	No		NSW State Heritage Register	Yes	Hy Brasil is on the register	National Trust of Aust (NSW) Register	Yes	Hy Brasil is on the register	RAIA Register of 20th Century Buildings of Significance	Yes	Hy Brasil is on the register	Other	N/A	
SEPP (Biodiversity and Conservation) 2021	No																		
Australian Heritage Register	No																		
NSW State Heritage Register	Yes	Hy Brasil is on the register																	
National Trust of Aust (NSW) Register	Yes	Hy Brasil is on the register																	
RAIA Register of 20th Century Buildings of Significance	Yes	Hy Brasil is on the register																	
Other	N/A																		

Internal Referral Body	Comments
	boundary with 74 Chisholm Avenue. Hy-Brasil is located on the other side of 74 Chisholm Avenue. No works are proposed for the eastern part of the site. Given the physical separation of the site and the retention of the vegetated rear portion, the proposal is considered to not impact upon the heritage item or its significance. Therefore Heritage raises no objections and requires no conditions. Consider against the provisions of CL5.10 of PLEP. Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	Supported, subject to conditions The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	Supported, subject to conditions Reference is made to the proposed development at the above area and Aboriginal heritage. No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development. Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

All, Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1301272S_02 and dated 8 September 2023). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. ENV220311 dated 5 October 2022).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	50

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Housing) 2021

Part 1 – Secondary Dwellings

Clause 52 – Development may be carried out with consent	
Standard	Compliance/Comment
(2) Development consent must not be granted for development to which this Part applies unless— a) No dwellings, other than the principal dwelling and the secondary dwelling, will be located on the land, and b) The total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area permitted for a dwelling house on the land under another environmental planning instrument, and c) The total floor area of the secondary dwelling is: i) no more than 60m², or ii) if a greater floor area is permitted for a secondary dwelling on the land under	Compliant as floor area for secondary dwelling is 59.7m²

another environmental planning instrument - the greater floor area.	
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SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Pittwater Local Environmental Plan 2014

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m (Garage) 5.5m (secondary dwelling)	8.4m (Garage) 6.9m (secondary dwelling)	- 25.5%	Yes No

Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
1.9A Suspension of covenants, agreements and instruments	Yes
Part 4 Principal development standards	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
Part 5 Miscellaneous provisions	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
Part 7 Additional local provisions	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone C4 Environmental Living

The underlying objectives of the C4 Environmental Living zone

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*

Comment:

The proposal is located within front portion of the subject site, which is steep. The proposed earthworks are localised to the secondary dwelling and garage footprint and 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.

- *To ensure that residential development does not have an adverse effect on those values.*

Comment:

The development will not have an adverse effect on any special ecological, scientific or aesthetic values.

- *To provide for residential development of a low density and scale integrated with the landform and landscape.*

Comment:

The proposed secondary dwelling and garage is minimal in scale and has been suitably integrated with the landform and landscape (subject to conditions).

- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

Comment:

The development will not effect wildlife corridors nor will it have an effect on riparian and foreshore vegetation.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the C4 Environmental Living Zone.

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	5.5m
Proposed:	6.9m
Percentage variation to requirement:	25.5%

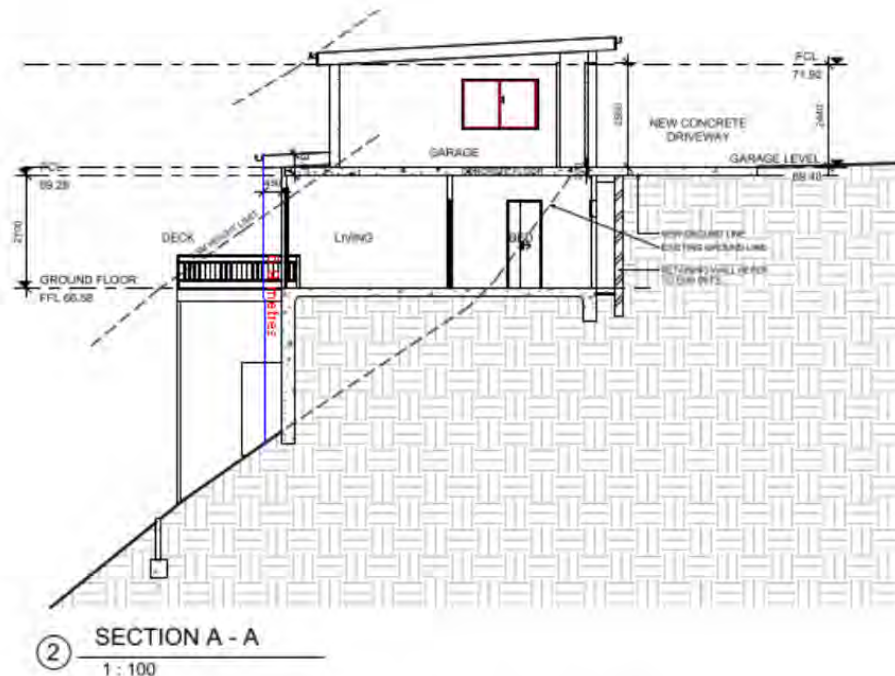


Figure 1 - Extent of height breach - secondary dwelling

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 proposed structure will maintain the general bulk and scale of the existing surrounding dwellings 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 surrounding character of Hilltop Road which also promotes the orderly and economic use of the land (cl 1.3(c)).*
- *The proposed secondary dwelling is 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 of the subject site and respects surrounding properties 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))."*

It is considered that the applicant's justification to vary the building height development standard is adequate and provides sufficient environmental planning grounds. It is considered the proposed development will not unreasonably impact the amenity of the site, adjacent properties or public domain by way of building bulk (subject to conditioning the northern side setback for the garage level - side boundary envelope), privacy, solar access and view impact. The excavated area beneath the proposed secondary dwelling exasperates the numerical non-compliance. However, the material impacts on this non-compliance are considered to be minor and in keeping with existing and approved development in the locality.

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, 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:

While the proposal includes some numerically non-compliant built form elements, the bulk and scale of the development (subject to conditioning the northern side setback for the garage level - side boundary envelope) is considered to be reasonably managed to limit impact on other properties, given the geographical characteristics of the site and surrounds. The proposed development will not unreasonably impact upon the existing and desired streetscape character.

b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,

Comment:

The height and scale of the proposed secondary dwelling is generally consistent with that of similar structures and dwellings in the site vicinity.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The proposed development will not cause unreasonable overshadowing of adjacent properties.

d) to allow for the reasonable sharing of views,

Comment:

No views or vistas are expected to be unreasonably impacted as a result of the development.

e) to encourage buildings that are designed to respond sensitively to the natural topography,

Comment:

The proposed development is appropriately stepped to respond with the steep topography of the site while also ensuring functional residential development can be provided on the site.

f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items,

Comment:

The existing canopy trees and vegetation on and around the site will soften the built form and its visual impact on the natural environment.

Zone objectives

The underlying objectives of the C4 Environmental Living zone are:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*

Comment:

Through its design and siting, the proposed development is considered to have low impact on the ecological and aesthetic values of the site.

- *To ensure that residential development does not have an adverse effect on those values.*

Comment:

The proposed development is not expected to cause adverse impacts to the ecological and aesthetic values on the site.

- *To provide for residential development of a low density and scale integrated with the landform and landscape.*

Comment:

The proposed development provides for a low density residential dwelling with ancillary structures that provide greater functionality than the existing conditions.

- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

Comment:

The proposed development is not expected to cause unreasonable impact to wildlife corridors

that the site may contain.

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 and garage (Class 1 and 10a buildings).

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 (subject to conditions).

(b) the effect of the proposed development on the likely future use or redevelopment of the land

Comment:

The proposal will not unreasonably limit the likely future use or redevelopment of the land.

(c) the quality of the fill or the soil to be excavated, or both

Comment:

The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

(d) the effect of the proposed development on the existing and likely amenity of adjoining properties

Comment:

The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties.

(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 excavation works are generally limited to previously disturbed areas of the site and thus, the earthworks are not likely to disturb relics.

(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area

Comment:

Council's Biodiversity and Landscape Officers have reviewed the application and are satisfied that the proposal is not likely to have an adverse impact upon the existing vegetation, subject to adherence to the conditions of consent.

(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, however within the vicinity of a heritage item (SHR0079 - Hy Brasil - 60-62 Chisholm Road Clareville) and the proposal is considered to not impact upon the heritage item or its significance.

Conclusion

Having regard to the above assessment, it is concluded that the proposed development is consistent with Clause 7.2 of Pittwater LEP 2014, subject to conditions.

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 subject to recommended conditions. It is considered that the development will not have any adverse impact on the condition, ecological value and significance of the fauna and flora on the land; the importance of the vegetation on the land to the habitat and survival of native fauna; or the habitat elements providing connectivity on the land. It is considered 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 subject to recommended conditions. It is considered that the proposal includes appropriate measures to avoid, minimise, or mitigate the impacts of the development.

Before granting development consent, this clause also requires the consent authority to be satisfied that:

(a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or

(b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or

(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval subject to conditions. Conditions have been recommended to further mitigate impacts to the foreshore vegetation. Therefore, Council can be satisfied that the development is designed, sited and will be managed to any significant adverse environmental impact.

Conclusion

Having regard to the above assessment, it is concluded that the proposal satisfies the requirements of Clause 7.6 of Pittwater LEP 2014, subject to recommended conditions.

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, architectural plans 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 recommended 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 recommended 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, it is considered 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.

Conclusion

Having regard to the above assessment, it is concluded that the proposal satisfies the requirements of Clause 7.7 of Pittwater LEP 2014, subject to recommended conditions.

7.10 Essential services

Under this clause, development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

- (a) the supply of water,
- (b) the supply of electricity,
- (c) the disposal and management of sewage,
- (d) stormwater drainage or on-site conservation,
- (e) suitable vehicular access.

Comment:

The proposal benefits from the aforementioned essential services and thus, the application satisfies the requirements within Clause 7.10 of Pittwater LEP 2014.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	19.45m*	7.489m (secondary dwelling - timber deck)	61.5%	No
Rear building line	6.5m	41.7m (secondary dwelling/garage)	-	Yes
Side building line	2.5m (South)	7.5m (secondary dwelling/garage)	-	Yes
	1m (North)	1m (secondary dwelling/garage)	-	Yes
Building envelope	3.5m (South)	Within envelope	-	Yes
	3.5m (North)	Outside envelope**	117.1%	No
Landscaped area	60% (621.6m ²)	61% (631.8m ²)***	-	Yes

* Average of the front building setback (10m + 28.9m = 19.45m)

** Side setback to garage level will be conditioned to reduce non compliance with this control and improve streetscape (reduce bulk and scale).

*** Landscaping (569.7m² (55%) + 62.2m² (6% variation allowable under D11.11 Landscaped Area - Environmentally Sensitive Land).

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Section A Shaping Development in Pittwater	Yes	Yes
A1 Introduction	Yes	Yes
A1.7 Considerations before consent is granted	Yes	Yes
A4 Localities	Yes	Yes
A4.1 Avalon Beach Locality	Yes	Yes
Section B General Controls	Yes	Yes
B1 Heritage Controls	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3 Hazard Controls	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4 Controls Relating to the Natural Environment	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B5 Water Management	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6 Access and Parking	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8 Site Works Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
Section C Development Type Controls	Yes	Yes
C1 Design Criteria for Residential Development	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.11 Secondary Dwellings and Rural Worker's Dwellings	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	No	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

Clause	Compliance with Requirements	Consistency Aims/Objectives
Section D Locality Specific Development Controls	Yes	Yes
D1 Avalon Beach Locality	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes
D1.5 Building colours and materials	Yes	Yes
D1.8 Front building line	No	Yes
D1.9 Side and rear building line	Yes	Yes
D1.11 Building envelope	No	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D1.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D1.20 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

B8.1 Construction and Demolition - Excavation and Landfill

The proposal includes excavation exceeding 1.5 metres in depth. In order to address the requirements of this clause, the Applicant submitted a Geotechnical Report and certified forms 1 and 1A. Furthermore, Council's Development Engineer reviewed these documents, and raised no objections, subject to conditions as recommended.

C1.19 Incline Passenger Lifts and Stairways

Description of non-compliance

The proposal includes the addition of a external staircase and landings located adjacent the site's northern side boundary. This staircase and landings provides external access from the front portion of the site to the secondary dwelling house.

The location of this staircase results in non-compliance with the control as it is not set back 2 metres from the side boundary (proposed stairs/landings 1.1 metres setback).

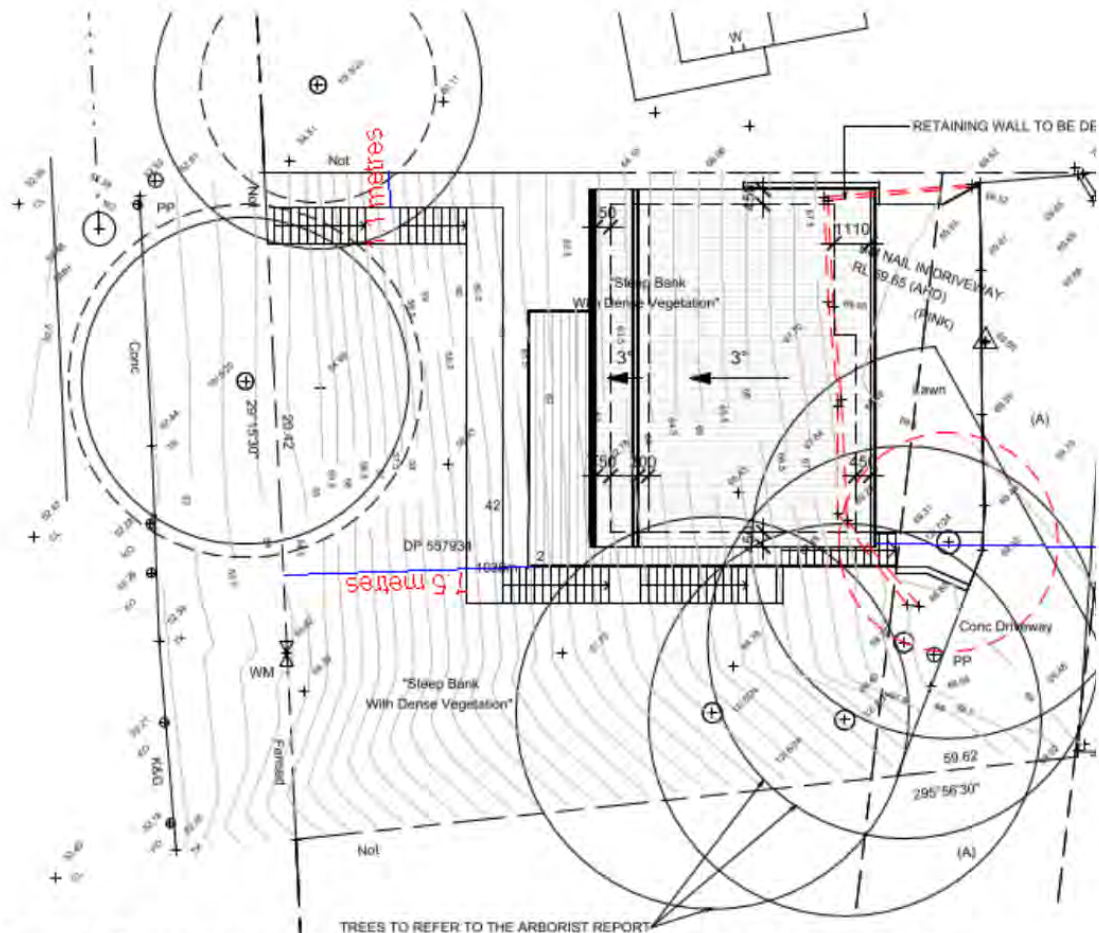


Figure 2 - Demonstrating 1.1m non compliant side setback for the stairs and landings

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *Incline passenger lifts and stairways that cause minimal visual and acoustic disturbance to the environment and neighbours. (En, S)*

Comment:

Given the steep slope of the site, it is considered reasonable to provide an external staircase/landing to the dwelling to provide access between levels. As the function of staircases is to provide access between levels and are not typically used for long periods of standing this proposal is not considered to result in unreasonable amenity impacts.

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.

D1.8 Front building line

Description of the Non-compliance

The front setback of the proposed timber deck for the secondary dwelling is located at a distance of 7.489 metres from the front boundary of the site. Clause D1.8 Front building line states: -

"6.5m, or established building line, whichever is the greater"

The average of the adjoining development is 19.45 metres, therefore the variation is 61.5% (11.961 metres).

Consideration of the Outcomes

A consideration of the Outcomes of the control is provided below:

To achieve the desired future character of the Locality. (S)

Comment: The desired future character (DFC) of the Avalon locality emphasises the importance of maintaining landscape features on the site. This proposal has been amended to maximise the amount of landscaped open space on the site over the previous submitted application (DA2022/1955). This will serve to minimise the footprint of the structure in the front setback area and provide sufficient areas of landscape open space to in turn meet the provisions of the DFC. It is also noted that the proposal is consistent with the built form and pattern of the streetscape.

The amenity of residential development adjoining a main road is maintained. (S)

Comment: This outcome is not relevant to the proposed development.

Vegetation is retained and enhanced to visually reduce the built form. (En)

Comment: As stated previously, the proposal has been amended to minimise the footprint of the structure. This in turn allows the application to be consistent with this outcome.

Vehicle manoeuvring in a forward direction is facilitated. (S)

Comment: This can be accommodated on the subject site, given the location of the garage, the right of carriageway and the existing dwelling. The driveway has been reviewed by Council's Development Engineer who is satisfied that the proposed driveway will meet the necessary road design standards.

To encourage attractive street frontages and improve pedestrian amenity.

Comment: The proposed amendments (via condition will increase the northern side setback of the garage level ensuring better modulation and articulation to the building) and the proposal will reduce the visual impact. Given the minimal width of Hilltop Road there is limited ways to improve pedestrian amenity, however it is noted there will access stairs leading down to Hilltop Road and also to the right

of carriageway at the top which will allow access to the garage and alternate route down to Hilltop Road ensuring this outcome is achieved.

To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment.

Comment: Based on the topography of the surrounding area, particularly on the eastern side of Hilltop Road where the slope rises up steeply from the carriageway of Hilltop Road, there is a preponderance of garage and the like structures located within the front setback. Not achieving compliance with the front setback is under the circumstances is reasonable, as it will minimize site disturbance and potential loss of the vegetated slopes. In this regard, locating the garage on the front boundary of the site will better respond to spatial characteristics of the existing urban environment.

In summary, despite the non-compliance, the proposal can still achieve the Outcomes of the control and full compliance with the minimum control is not necessary under the circumstances.

D1.11 Building envelope

Description of non-compliance

A building envelope of 45° measured at a height of 3.5 metres applies to the site in accordance with Part D1.11 of P21 DCP. There is a proposed envelope non-compliance on the northern side of the property, as displayed in Figures 3 & 4 below. As Figure 3 shows, the non-compliance is 6 metres in length, comprising of a height of 4.1 metres (111.7%) above 4.5 metres building envelope (3.5 metres building envelope + 1 metres side setback). A condition is recommended that increases the northern side setback to the garage floor level from 1 metres to 2.2 metres which will reduce the non-compliance considerably down to 2.1 metres (60%) as shown within Figure 4.

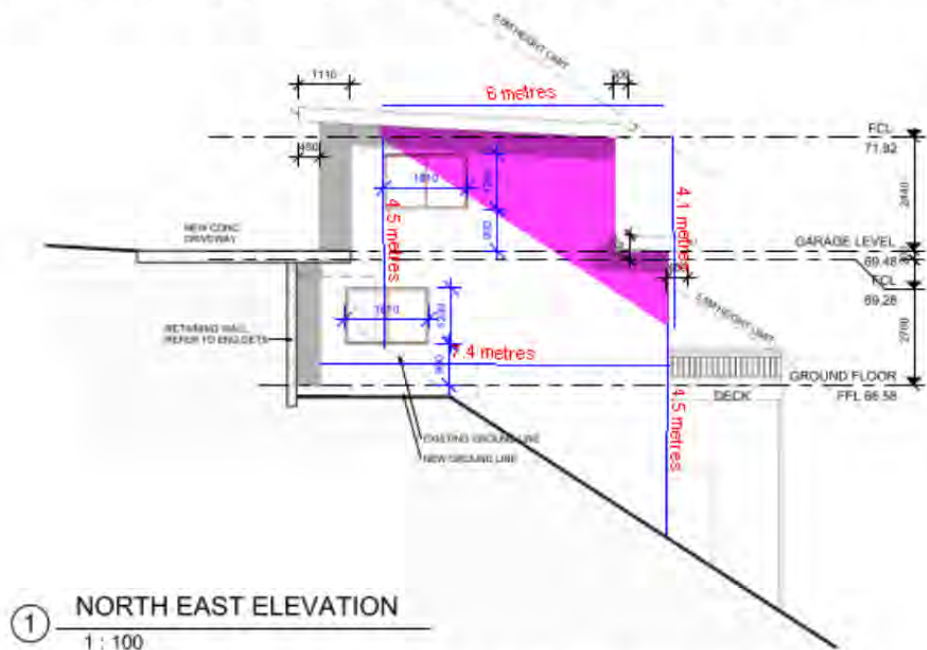


Figure 3. Section from the north elevation displaying the building envelope non-compliance

from a side-on angle.

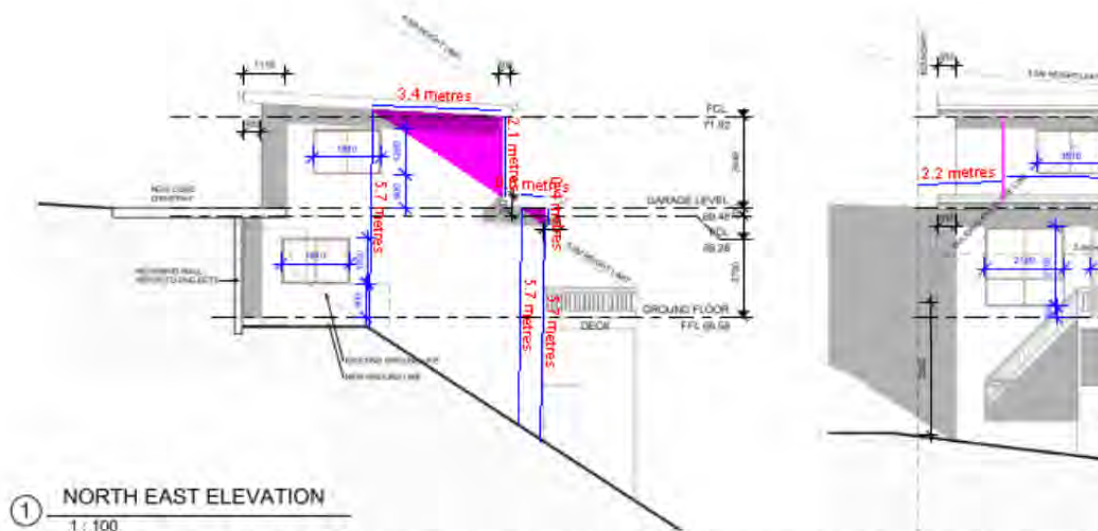


Figure 4. recommended condition for increased side setback which is increased from setback from 1m to 2.2m and reduces the northern envelope non-compliance and ensures a better streetscape presentation.

Merit Consideration

Considering this clause, variations may be permissible, where the development is considered against the underlying objectives of the control as follows:

- **To achieve the desired future character of the Locality.**

Comment:

The conditioned proposal will reduce the non-compliance to this control ensuring that the development will maintain and complement the desired future character of the locality.

- **To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.**

Comment:

The conditioned increased setback to the northern garage level will ensure that the design is accommodated with the fall in slope, minimising the bulk and scale of the proposed development and is situated below the surrounding tree canopy.

- ***To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.***

Comment:

The design subject to conditioning will ensure that the new development responds to, reinforces and sensitively relates to spatial characteristics of the natural environment such as the slope and tree canopy, resulting in a proposal that mitigates its bulk and scale.

- ***The bulk and scale of the built form is minimised.***

Comment:

The proposal as amended by recommended condition is considered to be of a suitable bulk and scale for the locality and ensure a better presentation to the streetscape below.

- ***Equitable preservation of views and vistas to and/or from public/private places.***

Comment:

No unreasonable impacts on views and vistas are expected to be generated as a result of this development.

- ***To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.***

Comment:

No unreasonable impacts on privacy, amenity and solar access are expected to be generated by this proposal affecting either the subject site or neighbouring properties.

- ***Vegetation is retained and enhanced to visually reduce the built form.***

Comment:

The proposal has been referred to Council's Landscape and Biodiversity Officers, who are supportive of the proposal subject to recommended conditions which have been included in this report.

Conclusion

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant outcomes of the P21 DCP 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.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or

their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$4,200 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$420,000.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Pittwater Local Environment Plan 2014 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

- a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
- b) There are sufficient environmental planning grounds to justify the contravention.

2) The proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

PLANNING CONCLUSION

This proposal, for a secondary dwelling and associated works has been referred to the Development Determination Panel (DDP) due to the development exceeding the building height development standard by more than 10%.

The Clause 4.6 is considered to be well founded and is supported. Additionally, the front building line and the side boundary envelope non-compliance is supported (subject to condition) on the basis of no demonstrable impacts and the character and bulk and scale are satisfactory.

Overall, it is considered that the proposal has been designed appropriately to remain compatible with the prevailing built form of the locality and will not cause unreasonable impact to the amenity of adjacent properties, including solar access, privacy and view sharing. The proposal will retain the low density residential character, while there is the removal of one (1) tree the proposed landscaping of the site and conditioning will ensure that the development will complement the existing landform and blend in with the topography.

The proposal has therefore been recommended for approval.

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

That Northern Beaches Council as the consent authority vary 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 DA2023/1253 for Construction of a secondary dwelling and associated works. on land at Lot 42 DP 557934, 61 Hilltop Road, AVALON BEACH, subject to the conditions printed below:

Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

GENERAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
Sheet No. 1	C	Site and Roof Plan	RK Designs	19 January 2023
Sheet No. 2	C	Ground Floor Plan	RK Designs	19 January 2023
Sheet No. 3	C	Garage Level Plan	RK Designs	19 January 2023
Sheet No. 4	C	North East/North West & South East Elevations	RK Designs	19 January 2023
Sheet No. 5	C	South West Elevation/Section A - A	RK Designs	19 January 2023
Sheet No. 6	C	Area Calculations	RK Designs	19 January 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Vegetation Management Plan	-	Land Eco Consulting	26 November 2023
Biodiversity Development Assessment Report	-	Land Eco Consulting	26 November 2023
Stormwater Design Certificate	-	Modular Engineers	4 October 2022
Waste Management Plan	-	RK Designs	15 September 2022
Arboricultural Impact Assessment Report & Root Investigation Report	-	Season Tree Consulting	20 October 2022
Geotechnical Investigation	-	White Geotechnical Group	1 March 2022
BASIX Certificate (1301272_02)	2	RK Designs	8 September 2023
NatHERS Assessment	-	Enviro	5 October 2022

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency between 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	9 October 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.
 - iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a

safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

 - (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2018
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
 - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
 - (4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$4,200.00 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 \$420,000.00.

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. **Compliance with Ecologist's Recommendations – Pre-construction**

All impact mitigation measures specified in the approved Biodiversity Development Assessment Report are to be implemented at the appropriate stage of development.

Compliance with these measures is to be certified by the Project Ecologist in writing to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.

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. **Amendment of Vegetation Management Plan**

The submitted Vegetation Management Plan is to be amended in accordance with the following:

- Increase minimum maintenance period from three years to five years.

The Vegetation Management Plan is to be amended by the Consulting Ecologist and provided to the Principal Certifier prior to issue of the Construction Certificate.

Reason: To protect native vegetation, wildlife and habitats.

10. **Like for like credit retirement conditions - Ecosystem credit retirement conditions**

Prior to issue of the relevant Construction Certificate the class and number of ecosystem credits in Table 1 must be retired to offset the impacts of the development.

The requirement to retire credits outlined in Table 1 may be satisfied by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of ecosystem credits, as calculated by the Biodiversity Offsets Payment Calculator.

Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund in satisfaction of Table 1 requirements must be provided to the Manager Bushland and Biodiversity of Northern Beaches Council and to the Principal Certifier prior to release of construction certification.

Evidence will be in the form of:

- A copy of the confirmation email (from the BOS Credits team) to show that the correct type and number of credits have been retired, and from a relevant IBRA sub-region as per the offset rules, or
- If paid into the Biodiversity Conservation Fund, a copy of the section 6.33 statement.

Table 1 Ecosystem credits required to be retired – like for like

Impacted Plant Community Type	TEC	Number of ecosystem credits	Containing HBT	IBRA sub-region	Plant community type(s) that can be used to offset the impacts from development
3234-Hunter Coast Lowland Spotted Gum Moist Forest	Pittwater and Wagstaffe Spotted Gum Forest in the Sydney Basin Bioregion	1	No	Pittwater, Cumberland, Sydney Cataract, Wyong and Yengo. or Any IBRA subregion that	Pittwater and Wagstaffe Spotted Gum Forest in the Sydney Basin Bioregion This includes PCT's: 3234, 3437

				is within 100 kilometers of the outer edge of the impacted site.	
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Reason: To offset the residual biodiversity impacts of the development in accordance with the NSW Biodiversity Offset Scheme.

11. **Stormwater Disposal**

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent in accordance with AS/NZS 3500 and Council's Water Management for Development Policy, prepared by an appropriately qualified and practicing Civil 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 via a minimum seven thousand litre (7000 L) on-site detention tank with discharge controlled by a 45 mm orifice.

Details demonstrating compliance are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for disposal of stormwater management arising from the development.

12. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by White geotechnical group dated 30.01.2023 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.

13. **Off Street Parking Design**

The Applicant shall submit a design for the parking facility in accordance with the relevant provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical Controls and Section 2.6 Design of Domestic Driveways.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Construction Certificate.

Reason: Compliance with this consent.

14. Amendments to the approved plans

The following amendments are to be made to the approved plans:

- The northern side for the garage level is to be a minimum of 2.2m (measured from the northern side boundary to the outer wall).

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.

15. 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.

16. 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 Biodiversity Development Assessment Report (Land Eco Consulting, November 2023) and Vegetation Management Plan (Land Eco Consulting, November 2023).

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 Principal Certifier prior to issue of Construction Certificate.

Reason: To protect native vegetation and wildlife.

17. Compliance with Standards

The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards.

18. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range (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.

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. **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 the Arboricultural Impact Assessment Report dated 20 October 2022 prepared by Seasoned Tree Consulting and AS4970-2009 Protection of trees on development sites.

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment,

All tree protection measures specified must:

- a) be in place before work commences on the site, and
- b) be maintained in good condition during the construction period, and
- c) remain in place for the duration of the construction works.

The Project Arborist shall provide certification to the Principal Certifier that all tree protection measures under AS4970-2009 have been satisfied, and the recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained

shall be recorded, including at commencement, during the works and at completion.

Note: Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: Tree protection.

21. Tree Removal Within the Property

This consent approves the removal of existing trees on the subject site as identified in the Arboricultural Impact Assessment Report dated 20 October 2022 prepared by Seasoned Tree Consulting:

- i) Tree 1 *Angophora costata*
- ii) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised building works.

DURING BUILDING WORK

22. Protection of Rock and Sites of Significance

All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.

Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office contacted to assess the finds.

Under Section 89a of the NPW Act should the objects be found to be Aboriginal, NSW Biodiversity and Conservation Division, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

Reason: Preservation of significant environmental features.

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 the Arboricultural Impact Assessment Report dated 20 October 2022 prepared by Seasoned Tree Consulting and AS4970-2009 Protection of trees on development sites,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by the Project Arborist ,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with the Project Arborist,

- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by the Project Arborist on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with the Project Arborist including advice on root protection measures,
- vii) should either or all of v) or vi) occur during site establishment and construction works, the Project Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Project Arborist to the Principal Certifier,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
- ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

- c) The arboricultural works listed in a) and b) are undertaken and certified by the Project Arborist as compliant to AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.

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 the Project Arborist during the works.

In this regard all protected trees shall not exhibit:

- i) a general decline in health and vigour,
- ii) damaged, crushed or dying roots due to poor pruning techniques,
- iii) more than 10% loss or dieback of roots, branches and foliage,
- iv) mechanical damage or bruising of bark and timber of roots, trunk and branches,
- v) yellowing of foliage or a thinning of the canopy untypical of its species,
- vi) an increase in the amount of deadwood not associated with normal growth,

- vii) an increase in kino or gum exudation,
- viii) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
- ix) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of trees.

25. **Compliance with Ecologist's Recommendations – During Construction**

All impact mitigation measures specified in the approved Biodiversity Development Assessment Report (Land Eco Consulting, 2023) and Vegetation Management Plan (Land Eco Consulting, 2023) are to be implemented at the appropriate stage of development.

Compliance with these measures is to be certified by the Project Ecologist in writing to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.

26. **Wildlife Protection**

If construction activity associated with this development results in injury or displacement of a native mammal, bird, reptile or amphibian, a licensed wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife.

27. **Protection of Habitat Features**

All natural landscape features, including any rock outcrops, native vegetation and/or watercourses, are to remain undisturbed during the construction works, except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

28. **Road Reserve**

The applicant shall ensure the public footways and roadways adjacent to the site are maintained in a safe condition at all times during the course of the work.

Reason: Public safety.

29. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements, floor levels and the finished roof/ridge height are in accordance with the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier when the external structure of the building is complete.

Reason: To demonstrate the proposal complies with the approved plans.

30. **Waste Management During Development**

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

Details demonstrating compliance must be submitted to the Principal Certifier.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

31. **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.

32. **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

33. **Required Tree Planting**

Trees shall be planted in accordance with the following:

- a) 2 x locally native tree(s) shall be planted within the property to achieve at least 10metres height at maturity, and in accordance with the following:
 - i) tree planting shall be a minimum pre-ordered planting size of 75 litres; generally selected from Northern Beaches Council's Native Plant Species Guide - Pittwater Ward; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
 - ii) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces,
- b) Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of any Occupation Certificate.

Reason: To maintain environmental amenity.

34. **Condition of Retained Vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by the Project Arborist 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.

35. **Compliance with Ecologist's Recommendations – Post Construction**

All impact mitigation measures specified in the approved Biodiversity Development Assessment Report (Land Eco Consulting, November 2023) and Vegetation Management Plan (Land Eco Consulting, 2023) are to be implemented at the appropriate stage of development.

Written and photographic evidence of compliance is to be prepared by the Project Ecologist and provided to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.

36. **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.

37. **Replacement of Canopy Trees**

At least 2 locally native canopy trees are to be planted on the site to replace protected trees approved for removal. Species are to have a minimum mature height of 8.5m and be consistent with the Native Planting Guide available on Council's website.

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.

38. **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.

39. **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.

40. **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.

41. **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.

42. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**

The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), and Civil Engineers' certification.

The Applicant shall create on the Title a restriction on the use of land and a positive covenant in respect to the ongoing maintenance and restriction of the on-site stormwater disposal structures within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

43. **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.

44. **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.

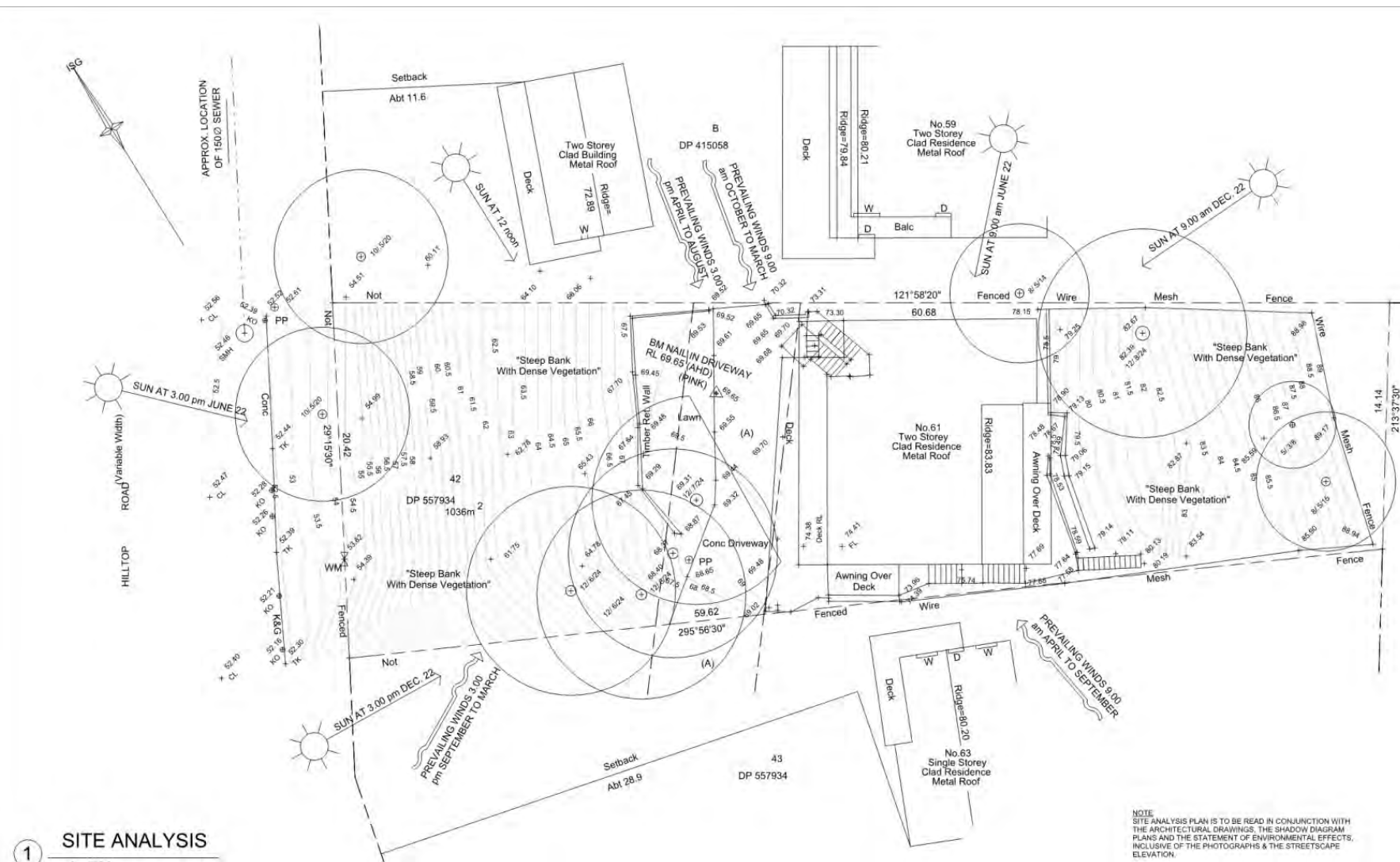
Reason: Proper identification of buildings.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

45. **Compliance with approved Vegetation Management Plan**

The site is to be managed in accordance with the amended and approved Vegetation Management Plan (VMP) (Land Eco Consulting, 2023). The VMP is to be implemented for a period of 5 years from date of commencement.

Reason: To protect native vegetation and enhance the natural environment.



1 SITE ANALYSIS
1 : 200

NOTE
SITE ANALYSIS PLAN IS TO BE READ IN CONJUNCTION WITH
THE ARCHITECTURAL DRAWINGS, THE SHADOW DIAGRAM
PLANS AND THE STATEMENT OF ENVIRONMENTAL EFFECTS,
INCLUSIVE OF THE PHOTOGRAPHS & THE STREETSCAPE
ELEVATION.

GENERAL NOTES
All dimensions are to be confirmed on site by the builder/subcontractor, any inconsistencies must be reported to the Designer before commencement of any work.
No Survey has been made on the boundaries, all bearings, distances and areas have been taken from the contour survey plan. A Survey must be carried out to confirm the exact boundary locations.
No construction work shall commence until a site survey confirming the site boundaries has been completed. The contractor is to ensure that the boundary setbacks are confirmed and used; the boundary setbacks take precedence over all other dimensions. The Survey work must be performed by a registered Surveyor in the event of encountering any discrepancies on these drawings, specification or subsequent instructions issued, the Builder/Subcontractor shall contact the designer before proceeding further with any work.
All construction, control joints and expansion joints in the wall, floors, other locations shall be in strict accordance with the Structural Engineering details. No joints or breaks other than specified, are allowed without written permission from the Engineer.
Measurements for the fabrication of secondary components such as windows, doors, internal frames, structural steel components and the like, are not to be taken from these documents. Measurements must be taken on site to suit the work as constructed.
All structural components shall be in strict accordance to details and specifications as prepared by a structural engineer.
All existing structures need to be examined for structural adequacy, and it is the Contractor's responsibility to ensure that a certificate of structural adequacy is available prior to the start of any work.

drawn	date	issue	description
EC	27/10/21	A	ISSUE FOR PRE DA
LS	23/11/22	B	ISSUE FOR DA

project
PROPOSED CONSTRUCTION OF A GRANNY FLAT AT 61 HILLTOP ROAD, AVALON BEACH 2107 LOT 42 DP 557934.

bdag
**ACCREDITED
BUILDING DESIGNER**

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abr. 88 659 200 389
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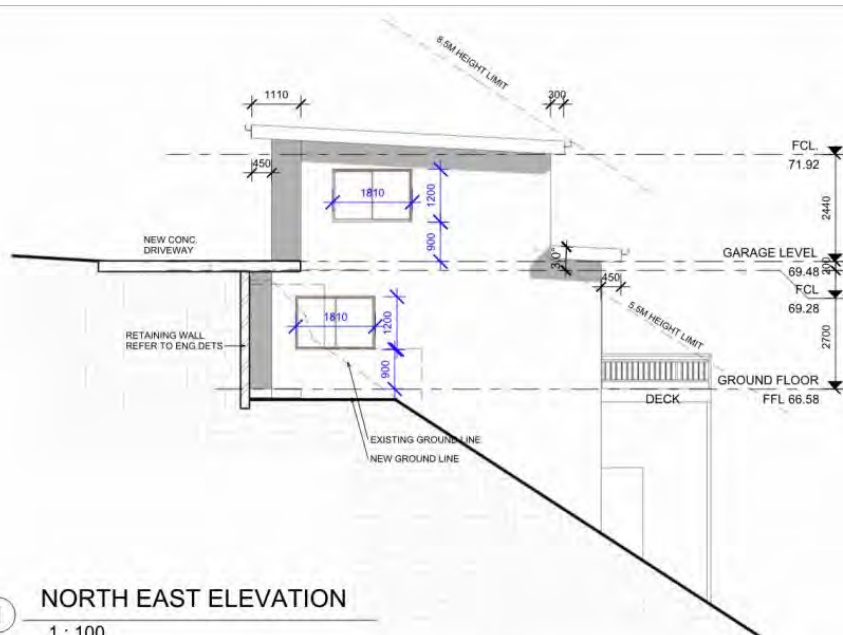
client
CRAIG DOUGLAS



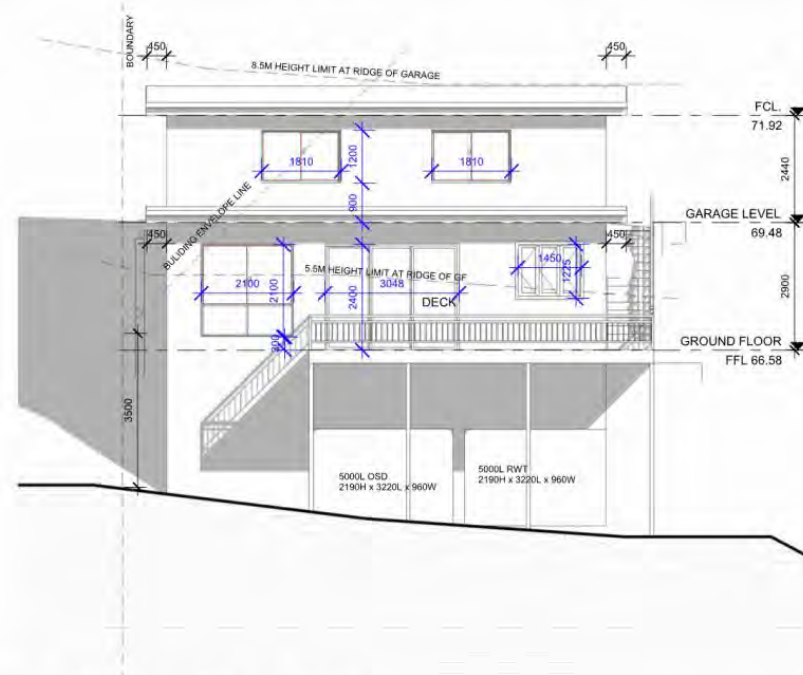
true north
drawing
SITE ANALYSIS

project no. date sheet no. scale @ A3 issue checked
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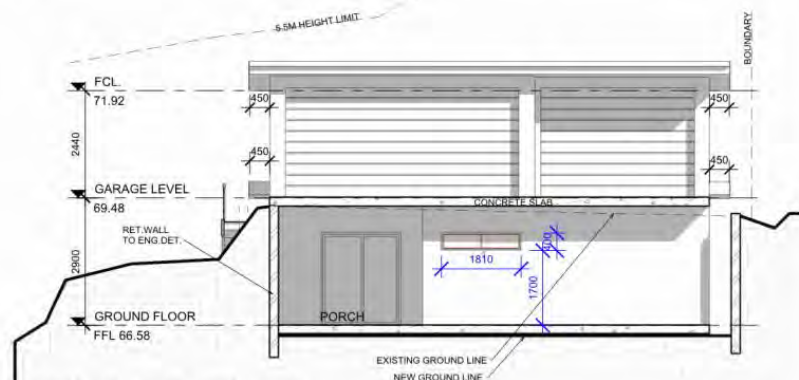
**RK
DESIGNS**



1 NORTH EAST ELEVATION
1 : 100



2 NORTH WEST ELEVATION
1 : 100



3 SOUTH EAST ELEVATION
1 : 100

GENERAL NOTES
All dimensions are to be confirmed on site by the builder/subcontractor, any discrepancies must be reported to the Designer before commencement of any work.
No Survey has been made on the boundaries, all bearings, distances and areas have been taken from the contour survey plan. A Survey must be carried out to confirm the exact boundary locations.
No construction work shall commence until a site survey confirming the site boundaries has been completed. The contractor is to ensure that the boundary setbacks are confirmed and used; the boundary setbacks take precedence over all other dimensions. The Survey work must be performed by a registered Surveyor.
In the event of encountering any discrepancies on these drawings, specification or subsequent instructions issued, the Builder/Subcontractor shall contact the designer before proceeding further with any work.
All construction, control joints and expansion joints in the wall, floors, other locations shall be in strict accordance with the Structural Engineering details. No joints or breaks other than specified, are allowed without written permission from the Engineer.
Measurements for the fabrication of secondary components such as windows, doors, internal frames, structural steel components and the like, are not to be taken from these documents. Measurements must be taken on site to suit the work as constructed.
All structural components shall be in strict accordance to details and specifications as prepared by a structural engineer.
All existing structures need to be examined for structural adequacy, and it is the Contractor's responsibility to ensure that a certificate of structural adequacy is available prior to the start of any work.

drawn	date	issue	description
EC	27/10/21	A	ISSUE FOR PRE DA
LS	23/11/22	B	ISSUE FOR DA
LS	19/01/23	C	ISSUE FOR ADDITIONAL INFO

project
PROPOSED CONSTRUCTION OF A GRANNY FLAT AT 61 HILLTOP ROAD, AVALON BEACH 2107 LOT 42 DP 557934.

bdag
ACCREDITED
BUILDING DESIGNER

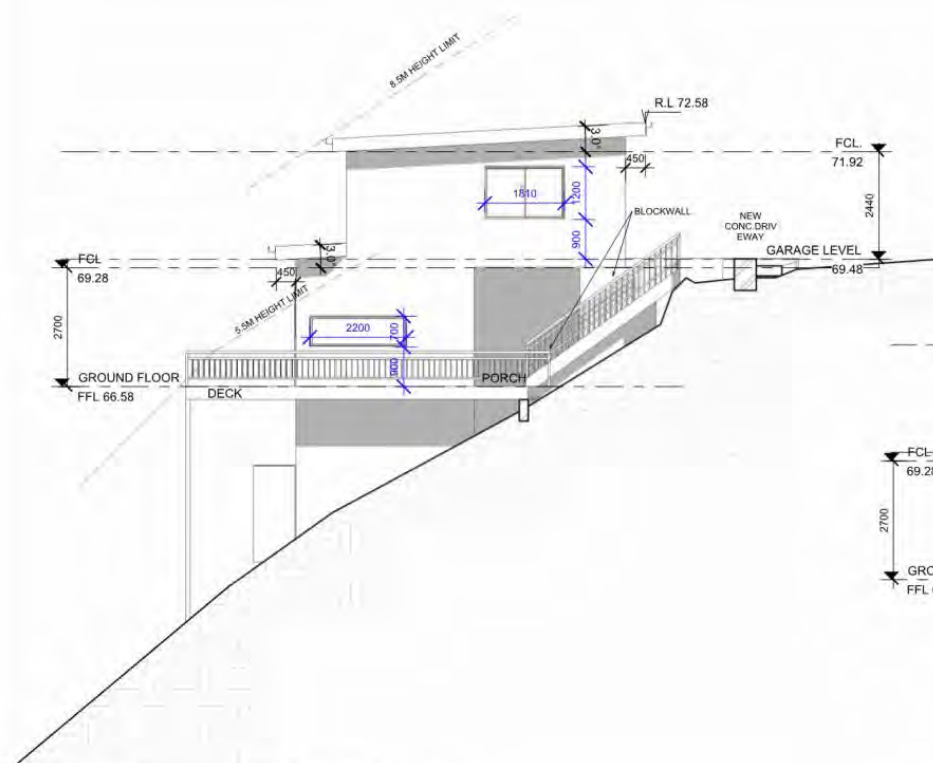
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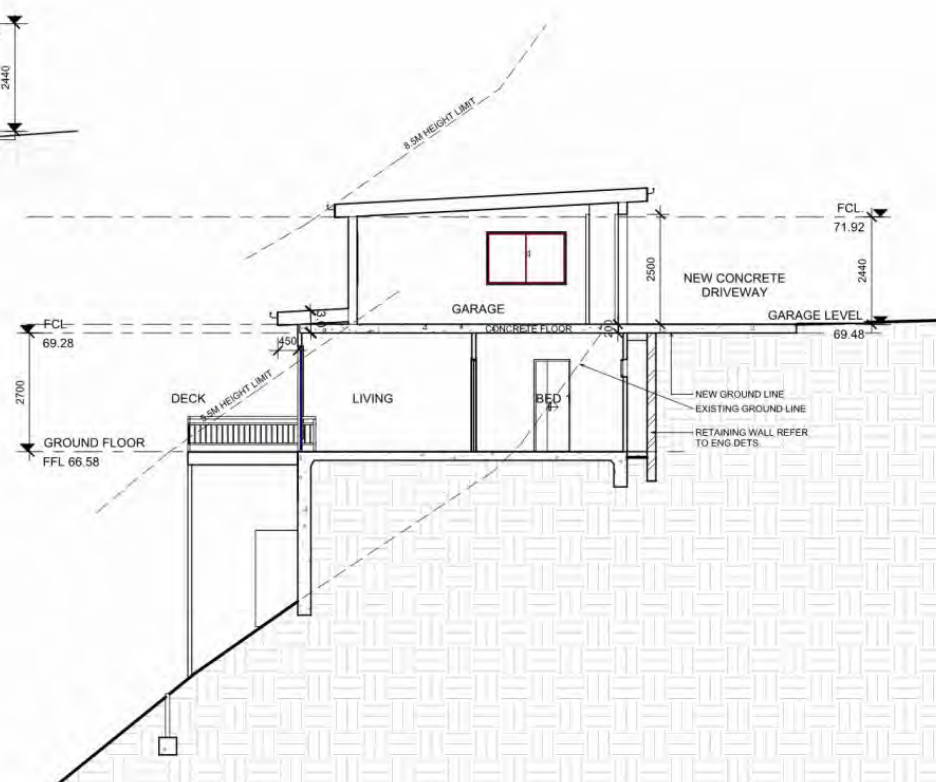


drawing	project no	date	sheet no.	scale	@ A3 issue	checked
ELEVATIONS	21-109	27/10/21	4	1 : 100	C	





1 SOUTH WEST ELEVATION
1 : 100



2 SECTION A - A
1 : 100

GENERAL NOTES
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All structural components shall be in strict accordance to details and specifications as prepared by a structural engineer.
All existing structures need to be examined for structural adequacy, and it is the Contractor's responsibility to ensure that a certificate of structural adequacy is available prior to the start of any work.

drawn	date	issue	description
EC	27/10/21	A	ISSUE FOR PRE DA
LS	23/1/22	B	ISSUE FOR DA
LS	19/01/23	C	ISSUE FOR ADDITIONAL INFO

project
PROPOSED CONSTRUCTION OF A GRANNY FLAT AT 61 HILLTOP ROAD, AVALON BEACH 2107 LOT 42 DP 557934.



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drawing	project no	date	sheet no	scale	@ A3 issue	checked
ELEVATION AND SECTIONS	21-109	27/10/21	5	1 : 100	C	



**Clause 4.6 Variation – Height of Buildings
Pittwater Local Environmental Plan 2011**

PROJECT
**CONSTRUCTION OF
A SECONDARY DWELLING**

PROPERTY
61 HILLTOP ROAD, AVALON BEACH

CLIENT
CRAIG DOUGLAS

JOB NO
21-109

DATED
19 January 2023

Suite 6, 7 Parkes Street,
Parramatta 2150 NSW
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REQUEST FOR A VARIATION TO DEVELOPMENT STANDARDS UNDER CLAUSE 4.6 PITTWATER COUNCIL LEP 2014

APPLICANT NAME: Craig Douglas

PROPERTY ADDRESS: 61 Hilltop Road, Avalon Beach

PROPOSED DEVELOPMENT: Proposed construction of a secondary dwelling

DATE: 19 January 2023

DEVELOPEMNT STANDARD: Clause 4.3 of PLEP 2014 Height of Building
We are seeking approval to vary Clause 4.3 Height of Buildings development standard of Pittwater Council Local Environmental Plan 2014.

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 that 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 height of a building in this locality to a maximum of 5.5m for the secondary dwelling. This control is considered to be a development standard as defined by Section 1.4 of the Environmental Planning and Assessment Act.

The definition of "development standard" in clause 1.4 of the EP&A Act mean 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,"

The proposed secondary dwelling, which as a result of the slope of the site will provide a height of up to 6.9m above natural ground level and which exceeds Council's maximum building height.

From an analysis of the architectural plans and available survey information, and as indicated on the 3D height plane at Figure 1 and 2. We confirm that the development results in a building height breach of a maximum of 1.4m on the south-west end of the structure/roof and 1.2m on the north-east end of the structure/roof.

The height of the development is contextually appropriate and will not be perceived as inappropriate or jarring in its context.

19 January 2023

Page 1

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3.0 MATTERS REQUIRED TO BE DEMONSTRATED UNDER CLAUSE 4.6(3) OF THE LEP

1. Compliance with the development standard is unreasonable or unnecessary in this particular case

Pursuant to Clause 4.6(3)(a) of the LEP, the variation to the height of buildings development standard is acceptable in the circumstances of this case and compliance with the development standard is considered unreasonable and unnecessary because the proposed work to the dwelling house are consistent with the objectives of the C4 – Environmental Living zone and the development meets the objectives of the height of buildings standard, notwithstanding non-compliance with the standard.

Objectives of the C4 – Environmental Living Zone

- 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 proposed structure meets the relevant objectives of the zone regardless that the development results in a variation to the building height development standard based on the following assessment:

- The proposal is a low impact development and does not have any impact on the ecological, scientific or aesthetic within the area. The building and it's setting will have a level of architectural design and finish which meets – and in many ways exceeds – the contribution of other buildings to the streetscape and landscape amenity.
- The form and scale of the proposed development is consistent with building forms in the immediate locality;
- The proposal retains and enhances riparian and foreshore vegetation and wildlife corridors.



Objectives of clause 4.3 height of buildings are to

- a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,
- b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,
- c) to minimise any overshadowing of neighbouring properties,
- d) to allow for the reasonable sharing of views,
- e) to encourage buildings that are designed to respond sensitively to the natural topography,
- f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

The proposed structure meets the objectives of the height of buildings development standard (notwithstanding non-compliance with the standard) based on the following assessment:

Objective (a) - The proposed structure form is consistent with the built form in the locality noting the topography and the setbacks restricting a large floorplate design.

The surrounding area is predominantly characterised by one and two storey development, the form of which is influenced by the sloping terrain of the land. Therefore, with the very steep topography of the site (gradient of 60% measured in the proposed footprint area) the noncompliance is quite understandable and reasonable. The height, bulk and scale of the development is consistent with the two-storey clad building established by the proprietors of the neighbouring property at 59 Hilltop Rd, Mona Vale. It should be noted that the endeavour is to minimise excavation as much as possible which helps to retain the existing natural landscape on the site.

Objective (b) – The height of the building is consistent with adjoining dwellings and will not present overbearing bulk and scale when viewed from dwellings. It should be noted that the height of the proposed structure to the highest point of the roof is less than the ridge height of the adjoining secondary dwelling at 59 Hilltop Road as shown on the architectural drawings.

Therefore, the breaching elements do not in any quantitative or qualitative manner contribute to unacceptable bulk and scale with the overall height of the development.



Objective (c) – The extent of the proposed overshadowing can be considered as minor and it does not materially affect the primary living spaces and outdoor areas of neighbouring properties. Shadows cast from the sun will fall within the property's landscape area and not on the neighbour's property at no.63 which has approximately 28m front setback.

Further, morning shadows will be cast with the front setback to Hilltop Road and afternoon shadows will not have any noticeable effect as the secondary dwelling is at a considerably lower than the primary residence.

Therefore, the proposed structure has been located to ensure that there is minimal overshadowing resulting from the proposal as any overshadowing falls for the most on the subject properties roof space or within the existing shadow cast by the existing residence.

Objective (d) – The secondary dwelling will benefit from great views down along the property towards Hilltop Road (West) and the Pittwater Basin. The proposed secondary dwelling has been strategically placed to retain the cluster of existing trees on the site and on the south side of the property which provide great benefits such as shade, privacy and landscape amenity. This will ensure the private nature of the locality is not compromised by the proposal.

Objective (e) – The proposal provides for the secondary dwelling, follows the siting and design of the existing dwelling. As the primary outlook for the adjoining neighbours is retained, and the building will continue to present a compatible bulk and scale, the works are considered to respond sensitively to the natural topography.

To comply with the height, sufficient amount of excavation is inevitable that will affect natural topography.

Objective (f) – The proposed works will not see any further site disturbance, and maintain a generous soft landscaped area. The site does not join any sites of heritage significance and the proposal is considered to be reasonable in this portion of Avalon Beach.



2. There are sufficient environmental planning grounds to justify contravening the development standard

Clause 4.6(3)(b) of PLEP requires the applicant to demonstrate that there are sufficient environmental planning grounds to contravene the development standard.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposed structure will maintain the general bulk and scale of the existing surrounding dwellings 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 surrounding character of Hilltop Road which also promotes the orderly and economic use of the land (cl 1.3(c)).
- The proposed secondary dwelling is 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 of the subject site and respects surrounding properties 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 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 the breach of the maximum building height control.

It is considered that these environmental planning grounds are particular to the circumstances of the site and support the proposed variation to the maximum building height standard. The proposal promotes good design and amenity and as such there is no planning purpose in strictly upholding the development standard. It is a better planning outcome to permit a variation to Clause 4.3 in this instance.

It is considered that enforcing compliance will lead to an environmental planning outcome that is sub-optimal when compared with the environmental planning outcome that would be secured by the adoption of the applicant's proposal.



4.0 THE PROPOSED DEVELOPMENT IS IN THE PUBLIC INTEREST

The proposed development is in the public interest as it is consistent with the objectives of the development standard and the C4 – Environmental Living Zone as clarified above in section 3, page 2 of this report.

Therefore, the proposal and the variation to height does not undermine the integrity of the building height development standard and its objectives, as well as the zoning objectives which have been adopted by Council as being in the public interest.

5.0 THE CONCURRENCE OF THE SECRETARY

The matters in clause 4.6(5) of the LEP should be considered when exercising the power to grant development consent for development that contravenes a development standard:

- a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- b) the public benefit of maintaining the development standard, and
- c) any other matters required to be taken into consideration by the secretary before granting concurrence.

The proposal is not likely to raise any matter of significance for State or Regional Environmental Planning. As addressed above the non-compliance with the building height standard is considered to be in the public interest because the proposed development is consistent with the objectives of the height standard and the objectives of the R2 - Low Density Residential zone.

The public benefit of maintaining the development standard is not considered significant because the building meets the 8.5m height standard. The variation to height is a result of the site topography and the proposed development is compatible with existing dwellings in the locality.

There are no other matters required to be taken into account by the secretary before granting concurrence.



6.0 CONCLUSION

It is submitted that a variation to Pittwater Council LEP 2014 is warranted for this project. The non-conformity does not impact adjacent properties and complies with the standards objectives while providing better utilization of the existing property for the changing demands of the occupant.

As demonstrated above, strict compliance with this standard is "unreasonable" to this Development Application as the proposed works comply with all the objectives of this height control and will have no impact on the amenity of surrounding neighbours in terms of view loss, privacy or increased overshadowing.

We, therefore, request in light of the above information and the considered design that the variation to Clause 4.3 (Height of buildings) be granted in accordance with Clause 4.6 (Exceptions to development standards) in the Pittwater Council's LEP for the proposed development in relation to proposed building height.

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19 January 2023

Page 7

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ITEM 3.7	DA2023/0129 - 4 FOREST ROAD WARRIEWOOD - SUBDIVISION OF ONE LOT INTO 13 LOTS AND ASSOCIATED WORKS
REPORTING MANAGER	Steve Findlay
TRIM FILE REF	2023/801936
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan

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 **refuses** Development Consent to DA2023/0129 for Subdivision of one lot into 13 lots and associated works on land at Lot B DP 370222, 4 Forest Road WARRIEWOOD, for the reasons for refusal set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0129
Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot B DP 370222, 4 Forest Road WARRIEWOOD NSW 2102
Proposed Development:	Subdivision of one lot into 13 lots and associated works
Zoning:	R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	BMN Properties Pty Ltd
Applicant:	BMN Properties Pty Ltd
Application Lodged:	22/02/2023
Integrated Development:	Yes
Designated Development:	No
State Reporting Category:	Subdivision only
Notified:	20/03/2023 to 17/04/2023
Advertised:	20/03/2023
Submissions Received:	9
Clause 4.6 Variation:	Nil
Recommendation:	Refusal
Estimated Cost of Works:	\$ 1,515,000.00

EXECUTIVE SUMMARY

The application seeks consent for the Torrens title subdivision of the existing site into 13 lots for future residential dwellings.

The application is referred to the Development Determination Panel (DDP) for determination as the notification of the application attracted 9 submissions in objection to the proposal. Councils DDP charter mandates that applications with 5 or more objections must be determined by the Panel.

The proposal is Integrated Development, requiring an approval from the NSW Rural Fire Service (NSW RFS) under s100B of the *Rural Fires Act 1997*. In the absence of General Terms of Approval (GTA's) from NSW RFS, the application cannot be approved. An initial referral response from the NSW

RFS (26 April 2023) requested additional information. The applicant has provided the additional information in response to the issues raised and the application was referred back to the NSW RFS. However, GTA's have not been provided by the NSW RFS at the time of writing. Given the substantial time elapsed since the initial NSW RFS comments and to avoid further delays in the assessment period, the application is reported to the DDP, and in the absence of the requisite GTA's, the application cannot be approved.

The proposal is contrary to the provisions of Pittwater Local Environmental Plan 2014 (PLEP 2014) and Pittwater 21 Development Control Plan (P21 DCP), with specific concerns relating to earthworks, stormwater management, traffic, biodiversity, bush fire and general amenity. These matters were also raised as issues by respondents in the 9 submissions received in objection to the proposal.

This report concludes with a recommendation that the DDP **refuse** the development application.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for the Torrens title subdivision of the existing site into 13 lots for future residential dwelling development.

To facilitate the subdivision, the following works are proposed:

- Construction of roads
- Earthworks, including:
 - Excavation (4,676m³);
 - Fill (8,770m³); and
 - Retaining walls
- Civil drainage works
- Tree removal

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.

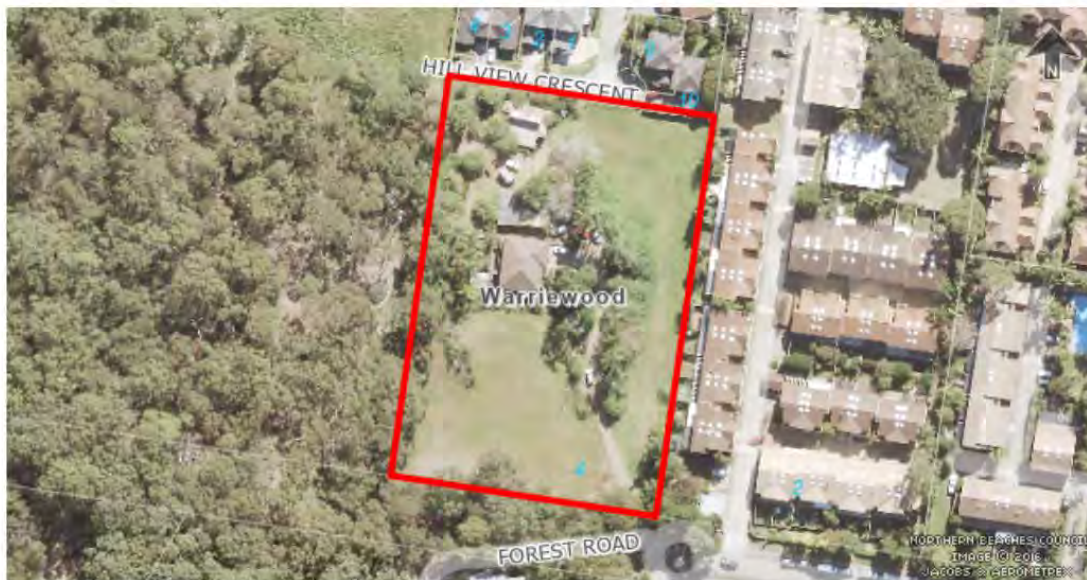
SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings
Pittwater Local Environmental Plan 2014 - 6.1 Warriewood Valley Release Area
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
Pittwater 21 Development Control Plan - A4.16 Warriewood Valley Locality
Pittwater 21 Development Control Plan - B5.15 Stormwater
Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements
Pittwater 21 Development Control Plan - B8.1 Construction and Demolition - Excavation and Landfill
Pittwater 21 Development Control Plan - C6.1 Integrated Water Cycle Management
Pittwater 21 Development Control Plan - C6.2 Natural Environment and Landscaping Principles
Pittwater 21 Development Control Plan - C6.4 The Road System and Pedestrian and Cyclist Network
Pittwater 21 Development Control Plan - C6.8 Residential Development Subdivision Principles
Pittwater 21 Development Control Plan - C6.9 Residential Land Subdivision Approval Requirements

SITE DESCRIPTION

Property Description:	Lot B DP 370222 , 4 Forest Road WARRIEWOOD NSW 2102
Detailed Site Description:	The subject site consists of one allotment located on the northern side of Forest Road. The site is regular in shape with a width of 80.24m and a length of 121.01m. The site has a surveyed area of 9703m². The site is located within the R3 Medium Density Residential zone and accommodates a dwelling house and associated structures. The site forms part of "Sector 501" of the Warriewood Valley Release Area, as shown on the Warriewood Valley Release Area Map of PLEP 2014. The site slopes down from west to the north-eastern side of the site approximately 25m Detailed Description of Adjoining/Surrounding Development Mater Maria Catholic School is situated to the south, separated from the site by an unmade public road reserve (Forest Road). No. 8 Forest Road, adjoining the site to the west/north-west, forms the balance of Sector 501 of the Warriewood Valley Release Area and comprises a residential development of 81 dwellings currently under construction. The remainder of properties along Forest Road consist of medium density residential development.

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:

N0539/16 - Staged Development Application under S83B of the Act for a concept proposal comprising a residential flat building with 18 units, 4 attached dwellings, 6 detached dwellings and subdivision - Withdrawn on 30 May 2017.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to site layout, DCP non-compliance, subdivision type, RFS refusal and landscaping.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirement(s) of the PLEP 2014 and PDCP 21 and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be 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 and the proposed development is for a subdivision of bush fire prone land that could lawfully be used for residential or rural residential purposes / a special fire protection purpose under Section 100B of the Rural Fires Act 1997. As such, the proposal is integrated development and requires a bush fire safety authority from the NSW Rural Fire Service (NSW RFS)

The application was referred to the NSW RFS as integrated development. The RFS does not support the current application and GTA's have not been provided by the NSW RFS.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 20/03/2023 to 17/04/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 9 submission/s from:

Name:	Address:
Ms Kristin Zindel	24 Grandview Drive NEWPORT NSW 2106
Ms Kate Holly Whipp	38 / 2 Forest Road WARRIEWOOD NSW 2102
Mater Maria Catholic College Warriewood	5 Forest Road WARRIEWOOD NSW 2102
Mr Stephen John Lumley Rebecca Jane Lumley	68 / 2 Forest Road WARRIEWOOD NSW 2102
Mr Ashley Brett Craig Hillsley	70 / 2 Forest Road WARRIEWOOD NSW 2102
Lee Jonathon Jackson-Price Chloe Anna Jackson	61 / 2 Forest Road WARRIEWOOD NSW 2102
Mrs Nicole Eileen Matthews	62 / 2 Forest Road WARRIEWOOD NSW 2102
Ms Natalie Norma Betty Parsons Jack Gregory Parsons	60 / 2 Forest Road WARRIEWOOD NSW 2102
Ms Sally Jane Fahey Mr Charles Napier Birks	2/222 Sydney Road FAIRLIGHT NSW 2094

The following issues were raised in the submissions:

- **Traffic and Access**
- **Amenity**
- **Stormwater**
- **Threatened species**
- **Loss of trees**
- **Future construction impacts.**

The above issues are addressed as follows:

- **Traffic and Access**

The submissions raised concerns that the proposed development will lead to unreasonable traffic and safety issues due to the increase density on site.

Comment:

Council's Traffic Engineer has reviewed the proposal. While no issue is raised with the subdivision proposal from a general traffic assessment perspective, the referral response is not supportive of the proposed application. The proposed development does not adequately address concerns with the additional traffic load the can access the proposed carriageway (related to traffic volumes from adjoining properties). This issue forms a reason for refusal.

- **Amenity**

The submissions raised concerns with regard to the amenity impacts from the future development of this site.

Comment:

While it anticipated that this site is developed into the future as as dwelling houses, the proposed new lots have the potential to have adverse amenity impacts on neighbouring properties when developed in the future if approved as proposed. The fill proposed across the northern and eastern portions of the site will exacerbate the overall height and impact of future dwellings on this site for adjoining residential properties.

- **Stormwater**

The submissions raised concerns with the proposed stormwater management across the site.

Comment:

Council's internal referral sections have reviewed the proposed development and are not supportive the proposed stormwater management design or titling arrangements. This issue forms a reason for refusal.

- **Biodiversity (Loss of trees and threatened species)**

The submissions raised concerns regarding the extent of tree removal.

Comment:

Council's Biodiversity Officer has reviewed the proposed development and does not support the proposal in its current form as the designs do not avoid or minimise impacts to native vegetation, especially the areas within and adjoining the southern and western boundaries of the site. This issue forms a reason for refusal.

- **Future construction impacts**

The submissions raised concerns about potential impact of future construction on neighbouring residential properties.

Comment:

Development of any site will undoubtedly cause disruption to adjoining properties. In order to reduce the potential disruption, standard conditions would be included, were the application recommended for approval, to ensure compliance with the relevant Australia Standards and to

allow for respite for neighbouring properties by imposing set operation/construction hours. This issue does not warrant refusal of the application.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Unsewered Lands)	Supported with Conditions General Comments The proposed development comprises: ▪ The subdivision of land legally described as Lot B in Deposited Plan 370222 from 1 Lot of total site area 9,709.8424m² (Parent Lot) into 13 individual lots. To facilitate the suitability and functionality of the resultant lots, this Development Application concurrently seeks approval for: – Demolition of the existing dilapidated dwelling and associated ancillary structures situated on the site. – Construction of roads – including a connection to the approved road through to 8 Forest Road. – Earthworks –to create the associated road hierarchy and to facilitate the future construction of dwelling houses under separate applications. – Civil drainage works – to support the proposed subdivision and facilitate future residential use. – Tree removal – to facilitate the proposed development and future residential land uses on the resultant lots, the proposed development necessitates the removal of twenty-three (23) high category trees and 14 (fourteen) low category trees. Twelve (12) of the low category trees are exempt from Northern Beaches Council's Tree Preservation Order. ▪ The proposed development is integrated development for the following reasons: – The proposed development seeks consent under s 138 of the Roads Act 1993 for works that include relevant activities listed under Division 4.8 (Integrated Development) of the Environmental Planning and Assessment Act 1979. – The proposed development comprises the subdivision of bushfire prone land and therefore requires authorisation under Section 100B in respect of bush fire safety in accordance with the Rural Fires Act 1997. Council has designated the land as unsewered. The SEE does not adequately address proposed disposal of human waste water. Any approval by Council cannot assume that AWTs systems or sewer will become available. Council would need Sydney Water Tap in Certificates that the proposal will be accepted into the Sydney Water Mains. Environmental Health does not support the proposal at this time. UPDATED COMMENTS (24 October 2023)

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	The applicant has advised : "Acor confirms that Sydney Water has made provision for a sewer connection. The civil plans have been updated to reflect the sewer main as shown in image below. Council's development consent would include a standard condition to this matter" A copy of related sewer main plan has been supplied. On this basis Environmental Health supports the proposal without additional conditions.
Landscape Officer	Supported with Conditions The application seeks consent to the subdivision of land of total site area 9,709.8 m² into 13 individual lots that involves: Demolition of the existing dwelling and associated ancillary structures; construction of roads including a connection to the approved road through to No. 8 Forest Road; earthworks to create the associated road hierarchy and to facilitate the future construction of dwelling houses under separate applications; civil drainage works to support the proposed subdivision and facilitate future residential use; and tree removal to facilitate the proposed development and future residential land uses on the resultant lots (removal of twenty-three high category trees and fourteen low category trees). Council's Landscape Referral staff have assessed the proposal against Pittwater Local Environmental Plan clause 6.1 Warriewood Valley Release Area, as well as the Warriewood Valley Landscape Masterplan and Design Guidelines, and Warriewood Valley Roads Masterplan; and the following Pittwater 21 DCP controls (but not limited to): C6 Design Criteria for Warriewood Valley Release Area, with reference to C6.2 Natural Environment and Landscaping Principles, C6.4 The Road System and Pedestrian and Cyclist Network, C6.7 Landscaped Area, and D16 Warriewood Valley Locality. The proposed road network includes dimensions typical of a Access Street under the Warriewood Valley Roads Masterplan, whereby a 12.5 metre wide road reserve is proposed with 2.5 metre verge either side of the carriageway and the inclusion on a 1.5 metre wide footpath on side side of the carriageway, and street tree planting, and this matter shall be deferred to the relevant Council Officer. Updated Landscape Plans are submitted that include connected footpath arrangements and street tree planting in accordance with both the Warriewood Valley Landscape Masterplan and Design Guidelines, and Warriewood Valley Roads Masterplan, and all other plans shall be co-ordinated to include this information. All utility services shall be located under footpaths and not located on the side to be dedicated for street tree planting, where possible. The submitted Arboricultural Impact Assessment (AIA) report recommendations are noted, and should the application be approved

Internal Referral Body	Comments
	the existing trees nominated in the AIA report require removal for the subdivision works. The AIA report includes tree protection measures for existing trees not impacted by the proposed subdivision works.
NECC (Bushland and Biodiversity)	Not Supported <u>Revised Comments</u> The amended subdivision design is noted, showing a reduction in the heights of some retaining walls, changes to Lot 13, and also a revised layout of Road MC01. The revised Arborist Report, Landscape Plan and letter from the Bushfire Consultant are also noted. As previously identified, the majority of biodiversity impacts are within the unmade road reserve due to construction of road ways, retaining walls and the proposed off site bushfire asset protection zones. The amended proposal has not fully addressed the previous concerns and issues raised, and cannot be supported in its current form. Additional information is required in order to demonstrate how the proposal has avoided and/or minimised impacts to biodiversity values, including native vegetation. Where a proposal cannot avoid or minimise impacts to biodiversity, then additional justification is required in order to support the likely impacts, and additional compensatory measures should be proposed. Specifically, in addition to the lack of avoidance and minimisation of impacts, the proposal cannot be supported due to inconsistencies or lack of information including: • The numbers of trees to be removed is greater than that noted by Urbis, with the revised plans and Arborist indicating the removal of 19 high value trees. Of the 19 trees to be removed, 14 are located off-site. • Based on a site visit of the road reserve, additional trees and native vegetation is likely to be impacted as part of the development proposal (e.g. <i>Syncarpia glomulifera</i>, <i>Allocasuarina torulosa</i>). • The letter from Travers has not addressed the revised plans, especially the reduction in retaining wall heights between the building platforms and the hazard. • APZ are proposed off site which is only considered under exceptional circumstances, and section 3.2.5 of Planning for Bushfire Protection (PBP) must be addressed as part of the application. • Road gradients proposed exceed the maximum slope allowed for under PBP. • No total area of clearing has been stipulated in the FFA report and additional information is required to complete the assessment, including a map showing the calculated area of native vegetation removal. The report also states that the retention of trees 21, 23 and 24 will be possible after alteration of the cut and fill works proposed for the peripheral

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	road which will constitute part of the Asset Protection Zone. Clarification as to what trees are to be retained and removed is required due to conflicting reports. The FFA has used an earlier revision of the Arborist assessment as well as an outdated Subdivision Plan, and therefore the conclusions of the report are invalid. • The FFA is to review the previous assessments (Anderson, Sclerophyll and Dominic Fanning) for the adjoining 8 Forest Road site, and include a summary of relevant information. The Report lacks details on surveys conducted, especially survey of existing man made structures on site for the presence of threatened microbat species. Figure 3.2 maps a record of Fishbone Fern as a threatened species. • The FFA does not assess the direct and indirect impacts of the proposal adequately, with the plans indicating cut and fill across the entire site and adjoining areas and retaining wall > 8 metres in height. The proposed safeguard measures are not specific or relevant to the proposal and must be revised and updated. The Habitat assessments are to be reviewed as the majority indicate 'No Habitat' for the majority of species, however Assessments of Significance have been completed for several of these species. The information is also incorrect in some sections, for example the Powerful Owl assessment indicates 4 trees to be removed, and the microbat assessment talks about surveys of building however this has not be detailed within the body of the report. • The landscape proposal has included a range of species based on the Warriewood Valley Masterplan. However recommendations within the AIA and FFA recommend like for like replacements for the removals proposed within the site. This issue must be clarified, and suitable areas or locations for like for like replacements identified, or other measures, in order to mitigate and compensate for the potential impacts to biodiversity values. <u>Original Comments</u> The proposal seeks approval for subdivision and associated works, including extensive cut and fill, road construction, retaining walls and tree removals both on and off the subject site. The comments on this referral relate to the following controls and provisions: • NSW Biodiversity Conservation Act 2016 • Planning for Bushfire Protection 2019 • Pittwater LEP 2014 - Clause 7.6 Biodiversity Protection • Pittwater 21 DCP - Clause B4.18 Heathland/Woodland vegetation The subdivision proposal has been submitted with an Arboricultural

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	Impact Assessment report (AIA), a Flora and Fauna Assessment report (FFA), a Bushfire report, Civil Engineering Plans and a proposal for landscaping. The Biodiversity Planning team cannot support the subdivision proposal in its current format as the designs do not avoid or minimise impacts to native vegetation, especially the areas within and adjoining the southern and western boundaries of the site. The need to extensive cut and fill and retaining walls up to 8 metres high will not avoid or minimise the direct and indirect impacts of the proposal. An alternate lot and road layout is recommended to avoid and minimise these impacts, and the need for larger APZ's as highlighted by the NSW Rural Fire Service should also be factored into a revised layout. The use of the existing turning head at the end of Forest Road and current location of site entry/driveway should be utilised instead of the layout proposed as this will further avoid and minimise impacts. • The AIA report concludes that a total of 23 high category trees and 14 low category trees would be lost if the proposal is approved. No objection is raised in regards to the removal of twelve trees on the basis of the current Northern Beaches Councils' exemption list by species (Trees numbered 1,3,4,5,7,8,9,10,12,14,15,16,C). However, objections are raised as to the removal of trees 13,20,21,22,23,24,30,31,32,33,34,37,38,39 as these are located outside of the boundary of the lot which is the subject of this subdivision (As per the survey and page 28 of the AIA). Particularly noting that this includes proposed removal of trees 21,22,23,24,25 and 26 which are high value retention trees on a road reserve. • The results of the FFA accompanying this application have been noted. No threatened flora or fauna have been detected on site and entry into the Biodiversity Offsets Scheme is not triggered by removal of native vegetation, however the area of clearing should include the proposed removal of vegetation for the purposes of establishment of APZs. No total area of clearing has been stipulated in the FFA report and additional information is required to complete the assessment, including a map showing the calculated area of native vegetation removal. The report also states that the retention of trees 21, 23 and 24 will be possible after alteration of the cut and fill works proposed for the peripheral road which will constitute part of the Asset Protection Zone. Clarification as to what trees are to be retained and removed is required due to conflicting reports. The FFA has used an earlier revision of the Arborist assessment as well as an outdated Subdivision Plan, and therefore the conclusions of the report are invalid. • The FFA is to review the previous assessments (Anderson, Sclerophyll and Dominic Fanning) for the adjoining 8 Forest

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	Road site, and include a summary of relevant information. The Report lacks details on surveys conducted, especially survey of existing man made structures on site for the presence of threatened microbat species. Figure 3.2 maps a record of Fishbone Fern as a threatened species. • The FFA does not assess the direct and indirect impacts of the proposal adequately, with the plans indicating cut and fill across the entire site and adjoining areas and retaining wall > 8 metres in height. The proposed safeguard measures are not specific or relevant to the proposal and must be revised and updated. The Habitat assessments are to be reviewed as the majority indicate 'No Habitat' for the majority of species, however Assessments of Significance have been completed for several of these species. The information is also incorrect in some sections, for example the Powerful Owl assessment indicates 4 trees to be removed, and the microbat assessment talks about surveys of building however this has not be detailed within the body of the report. • The BF report has stated that the proposed Asset Protection Zones (APZs) would be partially within the road reserve to the South and the adjoining lot on the North-Western edge of the property and indicates that all other parts of the APZs outside of the site would comprise public road, nature strips and associated infrastructure. Objections are raised as the subdivision shall ensure that all APZs to achieve BAL 29 construction of future dwelling is contained on site, as opposed to clearing additional trees for these purposes on adjoining land. The use of a Performance solution is also questioned, and Acceptable Solutions should be adopted for the subdivision proposal. The NSW RFS have also noted issues with the APZs proposed and also question the use of Method 2 in this circumstance to achieve a BAL less than 29. • The landscape proposal has included a range of species based on the Warriewood Valley Masterplan. However recommendations within the AIA and FFA recommend like for like replacements for the removals proposed within the site. This issue must be clarified, and suitable areas or locations for like for like replacements identified. The numbers of proposed trees are adequate for the area but do not offset the approved removals. Planner Comment: Included as a reason for refusal
NECC (Development Engineering)	Not Supported Please Note: 1. The assessment has not focused on road layout and geometry, as it is assumed that the Traffic Section will be providing comment on

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	these matters. Excessive vertical grade for one road has however been noted. 2. The proposal to provide OSD for the road component of the entire development on Lot 7 and provide individual on site detention for lots on the individual lots is not supported. This would place the responsibility of maintaining the on site detention of the road area for the whole development on to one private owner. This is seen by the as an unacceptable risk to downstream properties. The following amendments are required 1. Provide DRAINS models to Council for perusal of the following: (i) Existing conditions for the 20%, 5% and 1% AEP events. (Confirm whether the upstream catchment is proposed to drain through the site and OSD basin for road runoff). (ii) Developed conditions for the 20%, 5% and 1% AEP events. The model should estimate built conditions on each lot including on-lot on-site detention. (iii) Developed conditions for the 20%, 5% and 1% AEP events with the proposed OSD tank on lot 7 only. Assume there is no on lot detention. 2. Civil Engineering drawings by Acor rev B dated 20.01.23. (i) DWG No. C1.201. Manly Council standard drawings do not apply to development in Region 1. Refer to the Warringah Council Development Engineering Minor Works Specification which are applicable for works in Northern Beaches (ii) DWG No. C2.101. Given the grade separation between road level and majority of lot area, please advise on the proposed vehicle access into property/ garage. (iii) DWG No. C7.001 & DWG No. C7.202. - Drainage Channel Detail. Provide a 1D HEC-RAS model to confirm the proposed overland flow channel can safely convey flows up to the 1% AEP. Provide 100mm freeboard. It is noted that the drainage channel has a proposed dual use as a access road for the on site detention/ WSUD basin. This is not feasible in the proposed form and is not supported. (iv) DWG No. C7.201 & C7.202. Provide top of pit levels for all pits shown on Section A & B and walls to justify the selected emergency overflow route through stairs. Provide pipe invert levels at all inlet pipes in to OSD system. (v) DWG No. C5.201. The proposed vertical grade of 18% is not supported. Design should be amended to provide an absolute maximum vertical grade of 15% in line with Austroads guidance. (vi) DWG No. C7.402. Maintain 6% pipe grade from Pit 07/2 to Pit 07/4 to reduce pipe drop at Pit 07/4. 3. DWG No. SKC2.01 - Subdivision Plan. The proposed maintenance access needs to be reviewed in line with comments below asking for an operation manual. Any vehicle using the access road is to be provided with front in, ingress and egress. A turning path for the proposed vehicle should be provided with amended plans.

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	4. A maintenance and operation manual in regard to the GPT and BIO Retention/detention basin operation is to be submitted for Councils review. Engineering Comments (24.11.23) The following amendments are required: 1. Provide DRAINS models to Council for perusal of the following: (i) Existing conditions for the 20%, 5% and 1% AEP events. (Confirm whether the upstream catchment is proposed to drain through the site and OSD basin for road runoff). (ii) Developed conditions for the 20%, 5% and 1% AEP events. The model should estimate built conditions on each lot including on-lot on-site detention. (iii) Developed conditions for the 20%, 5% and 1% AEP events with the proposed OSD tank on lot 7 only. Assume there is no on lot detention. 2. Civil Engineering drawings by Acor dated 16.10.23. (i) DWG No. C1.201. Manly Council standard drawings do not apply to development in Region 1. Refer to the Warringah Council Development Engineering Minor Works Specification which are applicable for works in Northern Beaches (ii) DWG No. C7.001 & DWG No. C7.202. - Drainage Channel Detail. Provide a 1D HEC-RAS model to confirm the proposed overland flow channel can safely convey flows up to th1 1% AEP. Provide 100mm freeboard. It is noted that the drainage channel has a proposed dual use as a access road for the on site detention/ WSUD basin. This is not feasible in the proposed form and is not supported. (iii) DWG No. C7.201 & C7.202. Provide top of pit levels for all pits shown on Section A & B and walls to justify the selected emergency overflow route through stairs. Provide pipe invert levels at all inlet pipes in to OSD system. (iv) DWG No. C5.201. The proposed vertical grade of 18% is not supported. Design should be amended to provide an absolute maximum vertical grade of 15% in line with Austroads guidance. (v) DWG No. C7.402. Maintain 6% pipe grade from Pit 07/2 to Pit 07/4 to reduce pipe drop at Pit 07/4. 3. DWG No. SKC2.01 - Subdivision Plan. The proposed maintenance access needs to be reviewed in line with comments below asking for an operation manual. Any vehicle using the access road is to be provided with front in, ingress and egress. A turning path for the proposed vehicle should be provided with amended plans. 4. A maintenance and operation manual in regard to the GPT and BIO Retention/detention basin operation is to be submitted for Councils review. <u>Stormwater Assets Section Comments</u> Based on the information that can be found, it appears that the

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	subdivision will result in Torrens title lots, with lot 7 being community title to accommodate the OSD. Based on this, its assumed that the stormwater infrastructure shown in the stormwater management plan is planned to be handed over to Council's ownership. As such, Council's stormwater assets team cannot support the proposal due to the below: A. The proposed stormwater infrastructure is collecting stormwater runoff from the public roadway as shown in MC01 - Forest Road and MC02. These stormwater pipes then connect into an OSD/ WSUD tank that is under the care and control of the community title. This cannot be supported as public stormwater infrastructure cannot discharge into a privately managed stormwater asset. B. Council will not support taking ownership of any OSD/ WSUD tanks as part of the subdivision. Planner Comment: Included as a reason for refusal
NECC (Flooding)	Supported - No conditions The property is not identified as flood affected. There are no applicable flood related development controls from Clause B3.11 of the Pittwater 21 DCP.
NECC (Water Management)	Not Supported This application was assessed in consideration of: • Supplied plans and reports; • Northern Beaches Water Management for Development Policy; • Warriewood Valley Urban Land Release Water Management Specification 2001; and • Relevant LEP and DCP clauses. The report is lacking clarity on the proposed subdivision of the dedicated lots in regards to water quality and the ultimately ownership of the water management system (raingardens on the road reserve and the detention basin) and should be updated to reflect the latest sub-division changes (community title). In addition the proposed stormwater management strategy is unclear on the split between the detention and retention function of the rainwater tanks for each lot. Volumes for each function is to be reported on the drawings and report. The lots pervious/impervious area used to model the water quality/balance is to be stated in the report and must be clearly

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	defined for "in perpetuity" management of the lots. The amended water quality model and water balance model are to be supplied to Council for review. Planner Comment: Included as a reason for refusal
Strategic and Place Planning (Urban Design)	Not Supported Urban Design Comments (Nov 2023) The applicant has submitted revised drawings on October 2023 with additional sections indicating: • how each dwelling lot platform relates to the natural ground level, • the 'cut and fill' required to achieve the road layout and • how each dwelling lot addresses the road. Urban Design cannot support the proposed modifications because of the following issues: 1. No detailed house design has been considered on the housing lots. The proposed earthworks rely on high retaining walls within each lot (height ranging up to 4.2m) and on the common boundaries (height ranging up to 2.8m). Site grading and retaining walls do not respect the existing terrain and instead, large 'cuts and fills' are used to create flat platforms on each lot without consideration of future house design and layout. Retaining walls should be used to reduce slope disturbances, rather than modify the natural terrain. As such, larger lot sizes should be considered as the natural slope increases. 2. The proposal should exhibit building designs that are integrated into the hillside context. Dwellings should incorporate stepped designs that follow the natural terrain and should not stand out vertically from the hillside. Exposed retaining walls should be designed with a natural-looking finish and buffered with landscaping elements. Significant natural scenic features, such as rock outcrops, should be retained where possible. 3. Retaining structures for roads, footpaths and planting verges proposed should integrate well with the onsite architectural character and natural environment. Previous Urban Design Comments: This advice is provided as an internal referral from the Urban Design Unit to the Development Assessment Officer for consideration and coordination with the overall assessment.

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	The application seeks consent to the subdivision of land of total site area 9,709.8 m² into 13 individual lots that involves: • Demolition of the existing dwelling and associated ancillary structures, • Construction of roads including a connection to the approved road through to No. 8 Forest Road, • Earthworks to create the associated road hierarchy and to facilitate the future construction of dwelling houses under separate applications, • Civil drainage works to support the proposed subdivision and facilitate future residential use, • Tree removal to facilitate the proposed development and future residential land uses on the resultant lots (removal of twenty-three high category trees and fourteen low category trees). Urban Design cannot support the proposed modifications for the following reasons: 1. The proposal involves substantial cut and fill of the hill slope resulting in a series of stepped terraces with increases to ground levels by up to 7 meters (approximately) using retaining walls up to 3.5m high. Some of the structural retaining walls (up to 2.8m high) proposed are right on the common boundaries to neighbouring developments. All new structures including retaining walls should comply with site setback requirements. 2. There is inadequate information provided with the proposed architectural built forms. Some of the proposed overall height of the individual houses will breach the 10.5m height control as building height is measured from the natural ground level, not the elevated fill levels. Clause 4.3 of the PLEP2014 sets a maximum building height limit of 10.5m. The proposed building heights should be shown on the architectural plans (using sections, elevations, 3D illustrations and etc.) demonstrating compliance with the building envelope and site setback controls. 3. Issues such as overlooking and privacy between proposed houses and neighbouring developments should be addressed. 4. A shadow impact study should be submitted with the proposed future built forms to be built on the elevated terrace levels. Please note: Regarding any view impacts and any impacts on solar amenity and overshadowing these matters will be dealt with under the evaluation of Councils Planning Officer. Any impacts of non-compliances regarding heritage will be dealt with under the

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	evaluation of Councils Heritage Officers, and any Landscape non-compliances will be dealt with under the evaluation of Councils Landscape Officers.
Strategic and Place Planning (Development Contributions)	Not Supported INTRODUCTION On 23 October 2023, Strategic and Place Planning received a referral request based on additional information now submitted for application (DA2023/0129), for the subdivision of 4 Forest Road into 13 lots and associated works. On 31 July 2023, Strategic and Place Planning (Development Contributions) provided referral comments that identified several deficiencies (TRIM 2023/479475). SUBJECT SITE 4 Forest Road Warriewood (Lot B DP 370222) contains a dwelling and associated ancillary structures and is bounded by residential properties at its rear and eastern (side) boundary. 8 Forest Road abuts the western (side) boundary of 4 Forest Road (the 'development site') and has a development consent on the portion of this property for residential development involving 81 dwellings/lots. The Warriewood Valley Urban Release Area boundary traverses this property. Forest Road is a closed road at the southern end. Vehicular access into the development site is from Forest Road, via the head-of the cul-de-sac. The development site is zoned R3 Medium density residential under Pittwater Local Environmental Plan 2014 (PLEP). This land and 8 Forest Road are Sector 5 under the PLEP Urban Release Area Map and Sector 501 under the Warriewood Valley Strategic Review Addendum Report. PROPOSED DEVELOPMENT The existing dwelling and associated ancillary structures are to be demolished. The site involves land subdivision to create 13 residential allotments under Torrens Title (with each lot proposed to accommodate a single dwelling house on each lot subject to future consent). Earthworks includes: • Construction of internal roads connecting from Forest Road to the approved road on adjoining 8 Forest Road. • Civil drainage works for the subdivision and associated infrastructure including water management facilities. The applicants' response to Councils' request was received on 16 October 2023 and includes: • Discussion against the DCP provisions. • Details of proposed subdivision, 'The OSD will be a community lot.' • Amended Landscape Plan • Amended Master Set Plan • 3D Impression Plans • Amended Civil Engineering Plans • Transport Impact Assessment, JMT Consulting dated 16 October

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	2023. • Bushfire Addendum, Travers Bushfire and Ecology dated 16 October 2023 . • Amended Arboricultural Report, Naturally Trees dated 16th October 2023. UPDATED RESPONSE Originally, additional information requested by S&PP (Development Contributions) sought details to identified deficiencies with the application. <table> <tr> <td>Number Deficiencies Identified(2023/479475)</td><td>Response as at 9 November 2023</td></tr> <tr> <td>1a <i>Details on the future ownership of internal roads and associated water management facilities (raingardens on the road reserve and the detention basin) for the subdivision. Clarification is required on the proposed road being connected to the approved road (being constructed as a public road) on 8 Forest Road.</i></td><td><i>Only the lot containing the OSD tank is confirmed as being a Community lot. Concerns originally raised have not been addressed.</i></td></tr> <tr> <td>1b A plan showing the site coverage for the individual lots based on the modelling assumptions for impervious fractions under the submitted water management plan.</td><td>Not submitted</td></tr> <tr> <td>1c Provide demonstration of the mechanism/approach to be applied on the subdivision to ensure this subdivision is only accommodating 13 dwellings and that the site cover for each lot as modelled in the submitted water management report will be maintained.</td><td>Not submitted</td></tr> </table> Since the issues remain unresolved, the application is not supported. RECOMMENDATION A. The deficiencies originally identified have not been addressed by the applicant's additional information. B. This application is not supported for the following reasons: 1. Uncertainty on the proposed future ownership of internal roads and associated water management facilities (raingardens on the road reserve and the detention basin) for the subdivision remains, making it difficult to undertake a complete assessment of the DA. 2. The applicant has not demonstrated that the site coverage for the individual lots is based on the modelling assumptions for impervious fractions under the submitted water management plan. 3. Uncertainty that only a maximum 13 dwellings will be	Number Deficiencies Identified(2023/479475)	Response as at 9 November 2023	1a <i>Details on the future ownership of internal roads and associated water management facilities (raingardens on the road reserve and the detention basin) for the subdivision. Clarification is required on the proposed road being connected to the approved road (being constructed as a public road) on 8 Forest Road.</i>	<i>Only the lot containing the OSD tank is confirmed as being a Community lot. Concerns originally raised have not been addressed.</i>	1b A plan showing the site coverage for the individual lots based on the modelling assumptions for impervious fractions under the submitted water management plan.	Not submitted	1c Provide demonstration of the mechanism/approach to be applied on the subdivision to ensure this subdivision is only accommodating 13 dwellings and that the site cover for each lot as modelled in the submitted water management report will be maintained.	Not submitted
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	accommodated on the site to ensure compliance with Objective (a) of Part 6.1(1) {Note to Planner – understand this can be rephrased to be a condition of consent if the Planner is recommending the DA for approval.} In conjunction with point 2 above, the DA does not demonstrate that the individual lot's site cover will be maintained in perpetuity (or the mechanism by which it would be maintained). This responsibility for water management is undefined. C. If the Assessment Officer deems it appropriate to recommend approval of the DA, a referral is to be sent to Strategic and Place Planning (Development Contributions) to provide a calculation of development contributions payable to Council, for inclusion in a future consent.
Traffic Engineer	Not Supported <u>Amended and additional information referral:</u> The application has been reassessed against the Warriewood Valley Roads Masterplan, Austroads, and Councils technical documents. The applicant has provided amended documents that address some of the previous concerns raised. Comments from the previous referral in <i>bold italics</i> and response below previous response. • <i>With reference to the future connectivity through this site would require the proposed Forest Road extension to be constructed as a Collector Road category. The road pavement shall be designed to be 8.4m carriageway with suitable 2.1m parking bays adjoining lots 11,12,13. The proposed road (noted as MC02) shall be a one way road generally heading northbound with suitable parking provided on alternating sides to act as traffic calming.</i> When assessed as a standalone development the road network is suitable for the yield proposed. However as the road (MC01) is designed to connect with the project at 8 Forest Road it needs to consider that additional load when designing the road carriageway. The additional traffic that can also potentially (subject to further approvals) access the carriageway from the development at 120 Mona Vale Road (based on previous prelodgements) which needs to be considered as well. This is why the construction was requested at collector road category in relation to width. The alternative is to remove any future potential parking along this section of carriageway to allow for the potential volume in the future. This could result in additional actions required to reduce speeds should it become an issue. As the road (MC01) provides connection through the subject site it is likely to be a public road dedicated to Council as the roads authority.

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	The vertical curve adjoining the existing cul-de-sac in Forest Road needs to be adjusted to allow for the appropriate safe stopping distance to be provided on approach to the existing roundabout at the school adjoining the site with no approval to remove the traffic device currently in place. The design drawings are incorporate the adjoining driveways to the school and residential properties for assessment. This matter has largely been addressed with the exception of the first 25 metres of the proposed road MC01 at the connection point to the existing road network.. Updated plans indicate the locations of access to the adjoining properties. The existing roundabout will remain as a device to reduce speeds at this location. A suitable crossing is to be provided to connect the proposed shared user path within the development to the existing network in Forest Road along the southern kerb. This is currently being addressed as a separate project to support improvements to safety at the adjoining school. The proposed driveway to lot 1 is not supported at the location shown at the existing roundabout approach. This has been relocated to a more appropriate location on the boundary of lot 1. It is also noted the proposed maintenance access to the OSD WSUD facilities are from an private (community titled) roadway and all servicing of the subject site is to be wholly contained on the subject site. Issues not addressed in updated plans. <i>The traffic modelling provided indicates that each lot will be a single dwelling, however lots 11-13 maybe considerably larger allowing for other development potential or consolidation which would further effect the modelling undertaken, especially when considered with the adjoining development areas that gain road access through this site.</i> Largely addressed with revised design. Additional traffic modelling does not address the issue with adjoining properties gaining access through proposed road MC01. It is noted that these are separate applications and therefore whilst the assessing officer is aware of the intent they cannot be considered as

Internal Referral Body	Comments
	part of this assessment directly. The applicant is required to address the road design issue raised in relation to MC01 the primary access through the site towards the northwest boundary. The application is currently not supported. Initial Referral: The application has been assessed against the Warriewood Valley Roads Masterplan, with reference to the future connectivity through this site would require the proposed Forest Road extension to be constructed as a Collector Road category. The road pavement shall be designed to be 8.4m carriageway with suitable 2.1m parking bays adjoining lots 11,12,13. The proposed road (noted as MC02) shall be a one way road generally heading northbound with suitable parking provided on alternating sides to act as traffic calming. The vertical curve adjoining the existing cul-de-sac in Forest Road needs to be adjusted to allow for the appropriate safe stopping distance to be provided on approach to the existing roundabout at the school adjoining the site with no approval to remove the traffic device currently in place. The design drawings are incorporate the adjoining driveways to the school and residential properties for assessment. A suitable crossing is to be provided to connect the proposed shared user path within the development to the existing network in Forest Road along the southern kerb. The proposed driveway to lot 1 is not supported at the location shown at the existing roundabout approach. It is also noted the proposed maintenance access to the OSD WSUD facilities are from an private (community titled) roadway and all servicing of the subject site is to be wholly contained on the subject site. The traffic modelling provided indicates that each lot will be a single dwelling, however lots 11-13 maybe considerably larger allowing for other development potential or consolidation which would further effect the modelling undertaken, especially when considered with the adjoining development areas that gain road access through this site. These matters need to be addressed prior to the development being further assessed.
Waste Officer	Supported with Conditions

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	Supported with Conditions The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of

External Referral Body	Comments
	Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	Supported with Conditions <u>AHO Comment</u> There are known Aboriginal sites in this area. No sites are recorded in the current development area, however, the area of the proposed development is considered as having high potential for unrecorded Aboriginal sites. Given the high potential, the AHO recommends a full and comprehensive Aboriginal heritage assessment be carried out for the land by a qualified Aboriginal heritage professional, including consideration for subsurface archaeological testing. This would provide an assessment of any unrecorded or potential Aboriginal sites within the allotment, and advice on potential (direct or indirect) impacts to any Aboriginal site. Should any Aboriginal sites be uncovered during earthworks, works should cease and Council, the NSW Department of Planning, Industry and Environment (DPIE) and the Metropolitan Local Aboriginal Land Council should be contacted.
Integrated Development - Rural Fire Service - Rural Fires Act, s100B - Subdivisions and Special Fire Protection Purposes	Not Supported - General Terms of Approval not issued The application is for a subdivision of bush fire prone land that could lawfully be used for residential or rural residential purposes / a special fire protection purpose under Section 100B of the Rural Fires Act 1997. As such, the proposal is integrated development and requires a bush fire safety authority from the NSW Rural Fire Service (NSW RFS). The application was referred to NSW RFS, who advised that additional information is required before they can issue General Terms of Approval, as follows: <i>1. Preliminary assessment of the site and surrounds has identified inconsistencies in relation to the effective slopes as below:</i> <i>The effective slope to the west of the subject site is assessed in the 0-5° downslope range as opposed to upslope considered in the submitted bushfire report. As such, larger Asset Protection Zones (APZ) which meets the requirements of 5.3a of Planning for Bushfire Protection (PBP) 2019; and</i> <i>Gentler effective slope to the south west of the subject site is assessed as compared 10° upslope considered in the submitted bushfire report, therefore requiring more than the currently assessed 20 metres.</i> <i>Any future referrals for the proposed development must consider the above assessed effective slopes in determining the appropriate APZ.</i> <i>2. The hazard to the south and south west of the proposed lot 13 has</i>

External Referral Body	Comments
	a connectivity to the broader hazard and does not comply with the requirements of section A1.11.1 of PBP 2019 to be downgraded to remnant hazard. As such, appropriate APZs with appropriate vegetation classification which meets the requirement of table 5.3a of PBP 2019 shall be provided. 3. Table 5.3a of PBP 2019, requires that the potential building footprints must not be exposed to radiant heat levels exceeding 29 kW/m² on the proposed lots. Further information such as a suitable building envelope plan complying with minimum council requirements and meeting the requirements of table 5.3a of PBP 2019 shall be provided for the proposed lots lot 10-13 with the future referrals when considering larger APZs required due to above identified variations in the assessed effective slopes. 4. The separation distance to the south and south west of the subject is considered beyond the proposed road carriageway with no evidence of management provided. Where offsite APZ is proposed, further information in accordance with section 3.2.5 of PBP 2019 shall be provided with the section 37 application.
Integrated Development - Roads and Maritime Services - Roads Act 1993, s138 - Works on classified road where Council is not the consent authority	Not Applicable This application does not trigger any referral to TfNSW under the Roads Act as it does not involve any civil works on a classified road and also does not trigger any referral to TfNSW under SEPP (Transport and Infrastructure) 2021.

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.

Transport for NSW (TfNSW)

Section 2.119 - Development with frontage to classified road states:

The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—

- (a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
- (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—*
- (i) the design of the vehicular access to the land, or*
- (ii) the emission of smoke or dust from the development, or*
- (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
- (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

Comment:

The application was referred to TfNSW. TfNSW responded stating that this application does not trigger any referral to TfNSW under the Roads Act as it does not involve any civil works on a classified road and also does not trigger any referral to TfNSW under SEPP (Transport and Infrastructure) 2021.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Pittwater Local Environmental Plan 2014

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	No
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	10.5m	The application proposes retaining walls on the site, however insufficient information has been provided to accurately measure height.	N/A	No

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.6 Subdivision - consent requirements	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
6.1 Warriewood Valley Release Area	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	No
7.6 Biodiversity protection	No
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

4.3 Height of buildings

While the proposed retaining wall structures are likely to comply with the 10.5m building height standard, insufficient information has been provided to enable Council to verify the maximum height of those structures. This lack of information is included as a reason for refusal.

6.1 Warriewood Valley Release Area

Clause 6.1(3) of PLEP 2014 identifies a dwelling yield of not more than 94 dwellings or less than 75 dwellings for Sector 501 of the Warriewood Valley Release Area, which comprises both 4 and 8 Forest Road, Warriewood. N04440/15 at 8 Forest Road, Warriewood was approved for 81 dwellings. Therefore, the 13 dwellings proposed with this application for a total of 94 dwellings in the Sector is

compliant with this control.

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 proposed excavation will have an unreasonable impact on the future redevelopment of the land. The extent of excavation and fill proposed will result in significant changes of levels across the site and alter the 'existing ground level' from which the building height of future dwellings would be measured.

(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 may be included requiring any fill to be of a suitable quality if the application is to be approved.

(d) the effect of the proposed development on the existing and likely amenity of adjoining properties

Comment: The proposed earthworks and associated retaining walls will result in unreasonable amenity impacts on adjoining properties.

(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 may be included requiring any fill to be of a suitable quality if the application is to be approved.

(f) the likelihood of disturbing relics

Comment: The development was referred to the Aboriginal Heritage Office who provided comments and conditions that can be imposed if the application is to be approved.

(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area

Comment: The proposed development will not have unreasonable impact on any waterway, drinking water catchment or environmentally sensitive area

(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the

development.

Comment: The proposed cut and fill proposed on the site will exacerbate amenity issue for future residents of the subject site and adjoining properties.

(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 inconsistent 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 **not supported**, in this particular circumstance.

7.6 Biodiversity protection

Council's Biodiversity Officer is unsupportive of the proposal as it does not avoid or minimise impacts to native vegetation as detailed in the Internal Referrals section of this report. This issue forms a reason for refusal.

Pittwater 21 Development Control Plan

Built Form Controls

No building works are proposed with the exception of retaining walls.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	No	No
A4.16 Warriewood Valley Locality	No	No
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.18 Heathland/Woodland Vegetation	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	No	No
B5.15 Stormwater	No	No
B6.3 Off-Street Vehicle Parking Requirements	No	No
B8.1 Construction and Demolition - Excavation and Landfill	No	No
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C6.1 Integrated Water Cycle Management	No	No
C6.2 Natural Environment and Landscaping Principles	No	No

Clause	Compliance with Requirements	Consistency Aims/Objectives
C6.3 Ecologically Sustainable Development, Safety and Social Inclusion	Yes	Yes
C6.4 The Road System and Pedestrian and Cyclist Network	No	No
C6.5 Utilities, Services and Infrastructure Provision	Yes	Yes
C6.7 Landscape Area (Sector, Buffer Area or Development Site)	Yes	Yes
C6.8 Residential Development Subdivision Principles	No	No
C6.9 Residential Land Subdivision Approval Requirements	No	No
D16.11 Form of construction including retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

A4.16 Warriewood Valley Locality

The proposed development is found to be incompatible with the desired future character of the Warriewood Valley Locality by virtue of its various non-compliances with the applicable PLEP and PDCP controls.

B5.15 Stormwater

The proposal does not make adequate provision for stormwater management to comply with the requirements of this control or Council's Water Management for Development Policy. Detailed comments are provided in the Internal Referrals section of this report. This issue forms a reason for refusal.

B6.3 Off-Street Vehicle Parking Requirements

The application fails to provide sufficient information to demonstrate that the proposed subdivision is capable of compliance with the requirements of this control. Detailed comments are provided in the Internal Referrals section of this report. This issue forms a reason for refusal.

B8.1 Construction and Demolition - Excavation and Landfill

The listed Outcomes of *Clause B8.1 Construction and Demolition - Excavation and Landfill* are as follows:

- *Site disturbance is minimised.*
- *Excavation, landfill and construction not to have an adverse impact.*
- *Excavation and landfill operations not to cause damage on the development or adjoining property.*

Comment:

This proposal includes significant excavation and fill works across the majority of the site.

The proposed excavation and fill volumes are considered to be excessive and do not minimise

disturbance of the site or the resulting impacts to surrounding land.

As such, the proposal is found to be **inconsistent** with the Outcomes of the control.

C6.1 Integrated Water Cycle Management

The proposal does not make adequate provision for water management to comply with the requirements of this control. Detailed comments are provided in the Internal Referrals section of this report. This issue forms a reason for refusal.

C6.2 Natural Environment and Landscaping Principles

The proposed alteration of the natural landform and removal of high value trees and biodiversity values, as discussed by Council's Biodiversity Officer, precludes compliance with the requirements of this control. Detailed comments are provided in the Internal Referrals section of this report. This issue forms a reason for refusal.

C6.4 The Road System and Pedestrian and Cyclist Network

Council's Traffic Section is unsupportive of the proposal for the reasons outlined in the Internal Referrals section of this report. This issue forms a reason for refusal.

C6.8 Residential Development Subdivision Principles

Clause C6.8 of P21 DCP highlights key principles to be addressed for residential subdivisions.

The proposed development fails to address a number of key provisions of this development control, including:

- The subdivision layout including the lot size must respond to the physical characteristics particular to each sector, such as slope and existing significant vegetation, and site constraints including bushfire risk.
- Lots must have the appropriate area, dimensions and shape to accommodate the housing product proposed as well as canopy trees and other vegetation, an private outdoor open space, rainwater tanks, vehicular access and onsite parking.
- Lots are to be orientated to optimise solar access for dwellings and areas of private open space. Widest or deepest lots are to be oriented with north to the front, with the narrowest orientated with north to the rear.
- Larger lots should be located on corners.

Notably, the proposal does not provide an appropriate response to the constraints presented by the existing vegetation, topography or bushfire affectation of the site. In this regard, the application is not supported by Council's Bushland and Biodiversity or Landscape sections, includes excessive earthworks that are not reflective of the natural topography and has not received GTA's from the NSW RFS.

Additionally, the building envelopes provided with the application fail to demonstrate the following:

- that a suitable housing product can be provided on the site, with adequate consideration of necessary canopy tree plantings, the provision of private open space, vehicular access, car

- parking, rain water tanks and stormwater management facilities, and
- that suitable titling arrangements are in place for the ownership and maintenance of essential services and infrastructure,

Without such information, the suitability and reasonableness of the proposed subdivision cannot be accurately determined, and Council cannot ensure that a high level of amenity is achieved for the individual allotments.

C6.9 Residential Land Subdivision Approval Requirements

Clause C6.9 of P21 DCP provides a series of approval pathways for development application seeking consent for subdivision only.

The proposal is consistent with 'Pathway 1', being a proposal for subdivision of land only, with no dwellings proposed. However, the application fails to provide the necessary information, as outlined by this development control, including a building envelope plan which demonstrates the following:

- Retaining walls
- maximum permissible building envelope (including site coverage for a dwelling under the provisions of SEPP Exempt and Complying), specifying setbacks, storeys and articulation zones,
- landscaped areas and deep soil areas,
- preferred location for private open space,
- driveway location and location of any hardstand areas,
- garage size and location,

Without such information, Council cannot be satisfied that the proposed subdivision will provide for future dwelling house development that is consistent with the provisions of P21 DCP or a development outcome that reflects the desired future character of the Warriewood Valley Locality.

It is noted that Council's advice in its Pre-lodgement Meeting notes and Request for Further Information recommended that a Pathway 2 application for Integrated Housing be pursued given the constraints presented by the site.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;

- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Inconsistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Inconsistent with the aims of the LEP
- Inconsistent with the objectives of the relevant EPIs
- Inconsistent with the objects of the Environmental Planning and Assessment Act 1979

PLANNING CONCLUSION

The application seeks consent for the Torrens title subdivision of the existing site into 13 lots for future residential dwellings at 4 Forest Road, Warriewood.

The proposal cannot be approved in the absence of General Terms of Approval from NSW RFS.

Nevertheless, even if this legislative obstacle in relation to RFS approval was overcome, there are still significant planning concerns with the proposal relating to poor planning outcomes associated with the extent of cut and fill across the site and potential impacts on neighbouring properties.

Additionally, there are numerous unresolved issues in relation to stormwater, traffic, landscaping, road design, urban design and biodiversity matters that prevent the proposal from being supported.

This report recommends that the application be **REFUSED**.

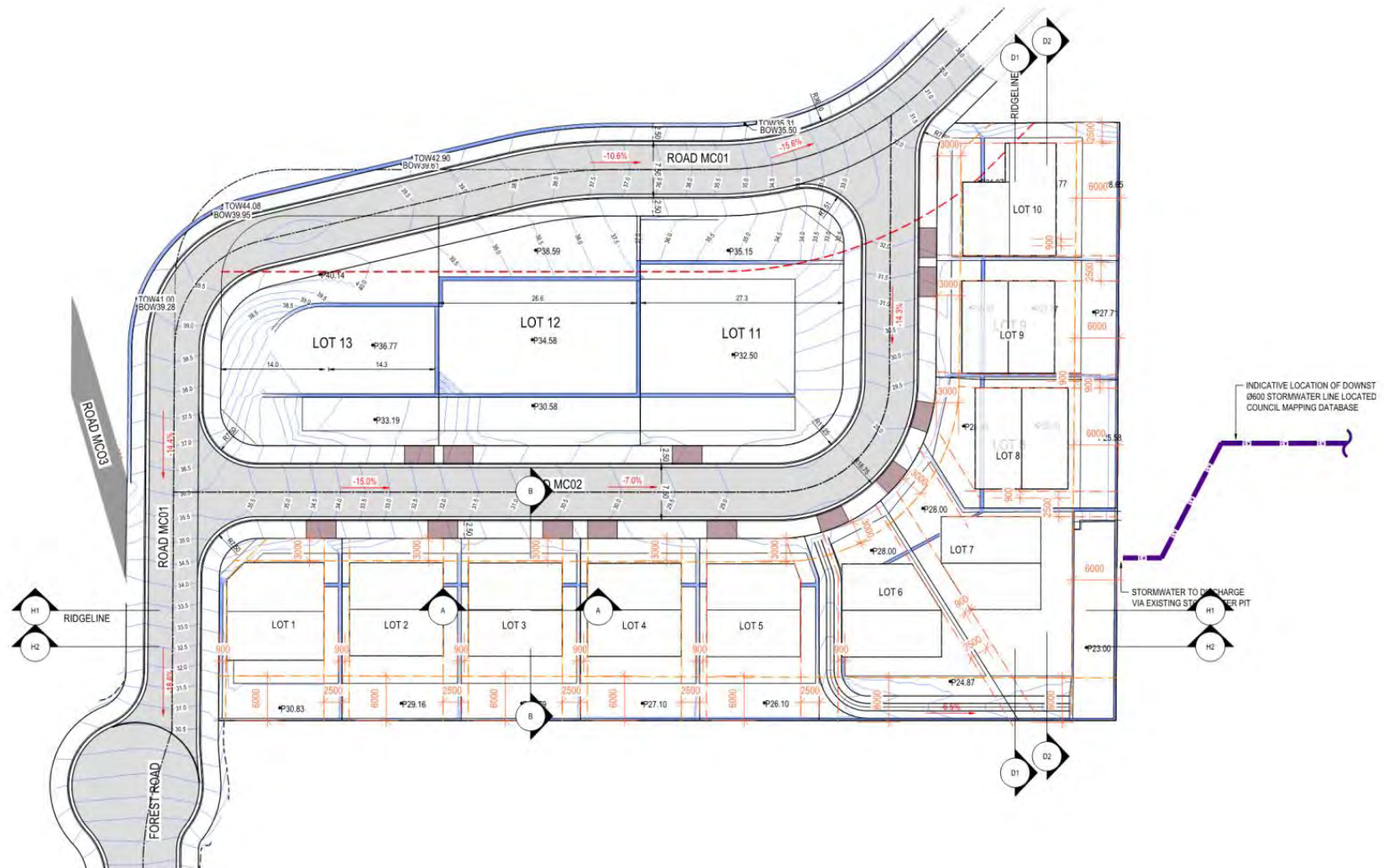
It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2023/0129 for the Subdivision of one lot into 13 lots and associated works on land at Lot B DP 370222, 4 Forest Road, WARRIEWOOD, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.

2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Pittwater Local Environmental Plan 2014.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.3 Height of buildings of the Pittwater Local Environmental Plan 2014. Specifically, insufficient information is provided to enable the calculation of the maximum height of structures proposed within the development.
4. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 7.2 Earthworks of the Pittwater Local Environmental Plan 2014 and Clause B8.1 Construction and Demolition - Excavation and Landfill of the Pittwater 21 Development Control Plan.
5. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 7.6 Biodiversity Protection of the Pittwater Local Environmental Plan 2014, Clause B4.22 Preservation of Trees and Bushland Vegetation and Clause C6.2 Natural Environment and Landscaping Principles of the Pittwater 21 Development Control Plan.
6. In accordance with the provisions of s.4.47(2) of the Environmental Planning and Assessment Act, consent cannot be granted as general terms of approval have not been obtained from NSW RFS for subdivision of bush fire prone land that could lawfully be used for residential or rural residential purposes/a special fire protection purpose under Section 100B of the Rural Fires Act 1997.
7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B5.15 Stormwater and Clause C6.1 Integrated Water Cycle Management of the Pittwater 21 Development Control Plan.
8. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B6.3 Off-Street Vehicle Parking Requirements and Clause C6.4 The Road System and Pedestrian and Cyclist Network of the Pittwater 21 Development Control Plan.
9. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C6.8 Residential Development Subdivision Principles and Clause C6.9 Residential Land Subdivision Approval Requirements of the Pittwater 21 Development Control Plan.



COUNCIL REFERENCE:
APPENDIX
LEVEL 2/27 ALFRED STREET NORTH
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2023

26/9/23
DATE
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**PROPOSED SUBDIVISION
4 FOREST ROAD WARRIEWOOD**

SITE PLAN

2216 A000.1 A
1:500 @ A3 JUNE 2023

**MHDP
ARCHITECTS**



