AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

Notice is hereby given that a Meeting of the Development Determination Panel will be held in the Banksia Room, Northern Beaches Council, Dee Why on

WEDNESDAY 20 DECEMBER 2017

Ashleigh Sherry
Manager Business System and Administration

northern beaches council

Agenda for a Meeting of the Development Determination Panel to be held on Wednesday 20 December 2017 in the Banksia Room, Northern Beaches Council, Dee Why

1.0 APOLOGIES & DECLARATIONS OF PECUNIARY INTEREST

2.0 MINUTES OF PREVIOUS MEETING

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2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 6 DECEMBER 2017

RECOMMENDATION

That the Panel note that the Minutes of the Development Determination Panel held 6 December 2017 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	**N0021/17/S96/1 - 41 WALWORTH AVENUE, NEWPORT - SECTION 96(1A) MODIFICATION TO CONSENT N0021/17 RELATING TO 41 WALWORTH AVENUE, NEWPORT (LOT 31, DP 9877) WHICH APPROVED THE DEMOLITION OF AN EXISTING DWELLING AND THE CONSTRUCTION OF A NEW DWELLING**
REPORTING MANAGER	**Anna Williams**
TRIM FILE REF	**2017/516404**
ATTACHMENTS	**1 ⇩Assessment Report** **2 ⇩DDP Plans (Site and Elevation Plans)**

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

That Council as the consent authority pursuant to Section 96(1A) of the Environmental Planning & Assessment Act 1979 modify Development Consent N0021/17 (which approved the demolition of an existing dwelling and the construction of a new dwelling) at 41 Walworth Avenue, Newport subject to the conditions outlined in the report.

SUBJECT: N0021/17/S96/1 – Section 96(1A) Modification to Consent N0021/17 relating to 41 Walworth Avenue, Newport (Lot 31, DP 9877) which approved the demolition of an existing dwelling and the construction of a new dwelling

Determination Level: Development Assessment Manager

SUMMARY OF RECOMMENDATION
APPROVAL TO MODIFY CONSENT

REPORT PREPARED BY:	**Tyson Ek-Moller**
APPLICATION SUBMITTED ON:	**12 September 2017**
APPLICATION SUBMITTED BY:	**Gerard Jung** **PO Box 332** **MANLY 2095**
OWNER:	**Gerard Majella Jung** **Shauna Loueen Villis**

1.0 PROPOSAL

A Section 96(1A) modification application has been lodged to modify Development Consent N0021/17, which relates to 41 Walworth Avenue, Newport (Lot 31, DP 9877) and which approved demolition of an existing dwelling and the construction of a new dwelling.

The applicant proposes to delete parts of consent condition no. B1. For reference, this condition currently reads as follows:

The following amendments shall be made to the approved plans:

- *The entire dwelling is to be lowered by 100mm (i.e. a floor level of RL 30.02)*
- *The ground level floor-to-ceiling height is to be reduced to 2.7m*
- *The rooftop light wells are to be reduced in width to a maximum of 3.0m (when measured at their southern ends) and are to be centralised on their corresponding building elements. The walls of the light wells can be sloped towards the external walls of the dwelling to avoid internal bulk heads within the rooms.*
- *This will result in the RLs of the dwelling being as follows: Garage – RL 30.02, rumpus – RL 30.20, ground floor – RL 32.9, first floor – RL 35.9, ridge – RL 40.15.*
- *All decking on the eastern side of the in-ground pool in the rear yard is to be deleted and replaced with landscaped area.*
- *The side path on the eastern side of the dwelling is to be no more than 1.0m in width. The remaining 500mm of space between the dwelling and the side boundary to be maintained as landscaped area.*

The applicant has proposed the deletion of the first four points of consent condition B1. If modified as proposed, the condition would read as follows:

The following amendments shall be made to the approved plans:

- *All decking on the eastern side of the in-ground pool in the rear yard is to be deleted and replaced with landscaped area.*
- *The side path on the eastern side of the dwelling is to be no more than 1.0m in width. The remaining 500mm of space between the dwelling and the side boundary to be maintained as landscaped area.*

In addition to the above, the subject modification application proposes changes to the rooftop light wells. The proposed changes are as follows:

- Reduction of height of the light well by 200mm (i.e. the maximum ridge height of the wells would be RL40.3); and
- Modifications to the design of roof to close the centre gap between the light wells, effectively "connecting" them in the middle to form a single roof plane.

No other changes (including modifications to other conditions and/or approved plans) are sought by the applicant.

2.0 SITE AND SURROUNDINGS

The subject site is identified as 41 Walworth Avenue, Newport (Lot 31, DP 9877). Aside from angled front and rear boundaries, the site is rectangular in shape with an area if approximately 651.3m^2. The front boundary of the site is oriented towards the north and adjoins the Walworth Avenue road reserve, with all other boundaries adjoining residential allotments. The site has a rear-to-front of approximately 5 metres; there was formerly a detached dwelling on the site, however all development has been demolished and construction has commenced on the dwelling as approved by Development Consent No. N0021/17.

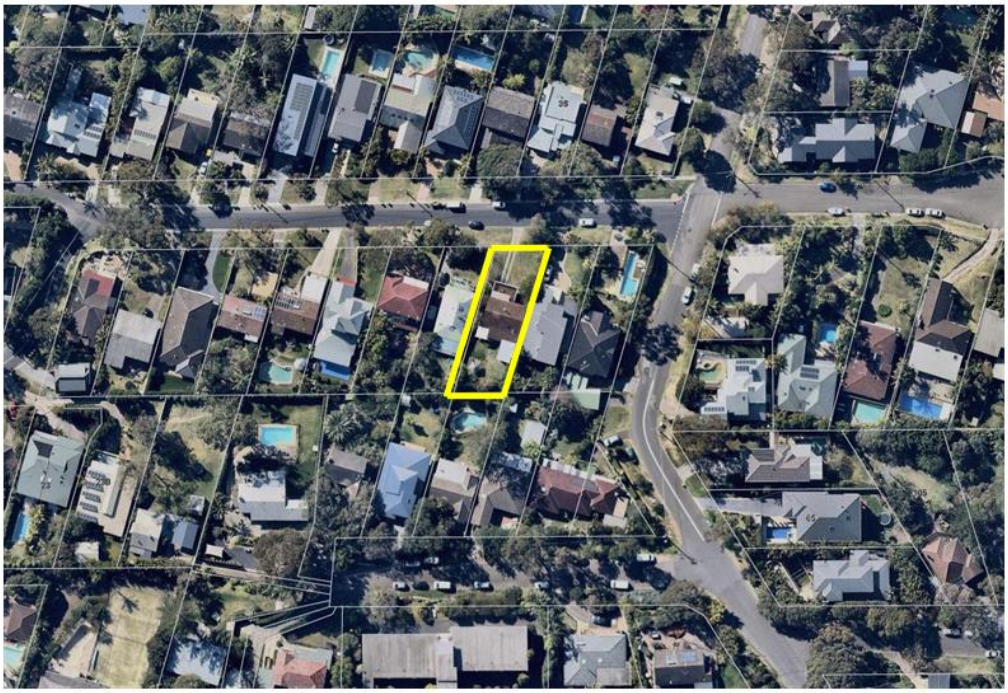


Figure 1: Aerial photograph of the subject site; the site is outlined by the yellow border. The aerial photo was taken prior to demolition of the dwelling as approved by Development Consent No. N0021/17 (Source: Nearmap 2017).

Figure 2: Photograph of the subject site from the front boundary; note the erection of height poles.

The subject site is within a R2 Low Density Residential zone; all boundaries also adjoin R2-zoned sites. Further to the above, the nearest zone boundaries are as follows:

- An E4 Environmental Living zone is located to the east and south of the subject site, and is approximately 65m from the site at its nearest point;
- An E2 Environmental Conservation zone is located approximately 200m south of the subejct site; and
- An SP2 Infrastructure (Classified Road; Barrenjoey Road) zone is located approximately 290m west of the subject site.

The subject site is affected by Class 5 Acid Sulphate soils, though it is not affected by any other affectations, hazards or known easements. The site does not contain a heritage item and is not within a heritage conservation area; there are also no heritage items within the vicinity.

Development both on surrounding sites and the locality broadly consists of low density residential development that consists predominately of detached dwelling houses and associated structure (i.e. outbuildings, pools, etc.).

Site inspections were undertaken by the assessing officer on 5 October 2017 and 24 October 2017, which indicated that the layout of the site is consistent with the proposed plans, and no significant issues were identified.

3.0 BACKGROUND

3.1 Site background:

Date	Details
06/03/1998	Building Application No. AA1/0076/98 approved for deck additions.
15/06/2017	Development Application No.N0021/17 approved for the demolition of the existing dwelling and construction of a new dwelling.
12/09/2017	Subject Section 96 Modification Application N0021/17/S96/1 lodged.

3.2 Application background:

Date	Details
12/09/2017	Subject Section 96 Modification Application lodged.
29/09/2017 05/10/2017	Submissions received.
05/10/2017 24/10/2017	Site inspections undertaken.

4.0 NOTIFICATION

4.1Public notification:

The subject application was notified for 14 days from 19 September 2017 to 3 October 2017 in accordance with Council's notification policy; notification processes included the despatch of letters to surrounding property owners and the erection of a notification sign at the subject site. Correspondence confirming that the sign had been erected was not received until 25 September 2017, therefore the notification period was extended until 9 October 2017.

In response, two (2) submissions containing three (3) names were received. Both submissions objected to the proposal.

4.2 Addresses of objectors:

The addresses of objectors are as follows:

- 8 Gertrude Avenue, Newport
- 10 Gertrude Avenue, Newport

Figure 3 (right): The location of the subject site (outlined by the yellow boundary) and sites from which submissions were received (outlined by the green boundaries)

4.3 Issues raised by submissions

Issues raised within submissions are as follows:

- The applicant is seeking to overturn changes previously approved by the Development Unit.
  - The changes being sought by the applicant would be readily achievable if minor modifications (i.e. excavations and retaining wall design changes) were made.
- The levels of excavation already underway would not meet the requirements of the modified consent.
- The modified proposal would adversely affect views.
  - Removal of the pitched upper section of the roof and the south facing highlight windows would reduce view-loss impacts.
- The modified proposal would adversely affect views.
  - The large number of large south (i.e. rear) facing windows would affect the privacy of sites to the rear; this is reflected by the limited number of south-facing windows on surrounding developments.
  - The large number of rear-facing windows would set a precedent for the area.
  - The south-facing decks would affect the privacy of sites to the rear
- The submitted statement indicates that the submitted photomontage would not satisfy LEC principles. The accuracy of height poles that were previously erected at the site are likely inaccurate. The submitted information would therefore not provide an accurate representation of the modified development.
- The height, bulk and scale of the development would not enhance the views of the applicant's property and would adversely affect the amenity of surrounding sites. The condition as imposed should therefore remain.
- The large windows at the rear of the site would promote excessive light spill, which would affect the amenity of adjoining sites and wildlife (i.e. owls).
- The owner of the subject site obtained access to an adjoining property prior to the lodgement of the subject modification application at the direction of Council, however no such direction was given.

4.4 Response to submissions

Most matters raised by submissions (i.e. view sharing and visual privacy) are discussed within Part 6 of this report (see below). While the final point is noted, the individual actions of a person(s) preparing the application are not capable of being considered by the planning assessment. Where they do not directly relate to applicable development controls, other matters have been addressed within the following table:

Issue	Response
The applicant is seeking to overturn changes previously approved by the Development Unit.	While the issue is acknowledged, Section 96(1A) of the *Environmental Planning and Assessment Act 1979* permits the applicant "*or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent*", provided that is can be demonstrated that: • The proposed modifications would be of "*minimal environmental impact*"; and • The originally approved development is substantially the same as what was originally granted. A more detailed assessment of relevant provisions within the EP&A Act is contained within Part 6 of this report.
The submitted statement indicates that the submitted photomontage would not satisfy LEC principles. The accuracy of height poles that were previously erected at the site are likely inaccurate. The submitted information would therefore not provide an	It is agreed that information submitted by the applicant was deficient as it was not prepared in accordance with the advisory notes under Part C1.3 of Pittwater 21 Development Control Plan, which make reference to relevant Land and Environment Court (LEC) principles. Part of the assessment process by the assessing officer included

accurate representation of the modified development.	inspections of sites from which objections were received. It was arranged for the applicant to erect height poles to coincide with such inspections so that a photographic analysis (and therefore a comprehensive view loss assessment) could be undertaken at the time of those inspections. In accordance with the advisory notes, documentation from a registered surveyor was provided by the applicant to demonstrate the accuracy of the heights and locations of the poles.
Excessive light spill	There are no development controls governing light spill, however as the development is a dwelling house it is not expected that there would be unreasonable environmental impacts on surrounding properties. It should also be noted that rooms at the rear of the top floor consist of a bedroom and study that would not be expected to be used on a constant basis. It is anticipated that light spill from the rear facing living area on the ground floor would likely be blocked by the sloping topography of the site and screening vegetation that would be required to be planted along the rear boundary (refer to Part 6 of this report for further detail).

5.0 INTERNAL COMMENTS

5.1 Internal Referrals:

Officer	Comments
Development Engineer	**Recommendation:** Supported (no additional conditions) **Comments:** "*No Development Engineering objection is raised to the proposed modification to consent with no additional conditions.*"

5.2 External Referrals:

None required.

6.0 SECTION 96 MATTERS OF CONSIDERATION

6.1 Environmental Planning and Assessment Act 1979

Section 95 - Lapsing of Consent

The consent has not lapsed. Development Consent No. N0021/17 was determined on 15 June 2017; a Construction Certificate (CC0347/17) has since been issued and the site inspections indicate that works had substantially commenced as of October 2017.

Section 96 – Modification of consents – generally

Section 96(1A) Modification - Modifications involving minimal environmental impact

The proposal has been considered in accordance with Section 96(1A) of the Environmental Planning & Assessment Act 1979.

Section 96(1A) of the Environmental Planning & Assessment Act 1979 states the following;

"*A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:*

(a) it is satisfied that the proposed modification is of minimal environmental impact, and

(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and

(c) it has notified the application in accordance with:

(i.) the regulations, if the regulations so require, or

(ii.) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

Subsections (1), (2) and (5) do not apply to such a modification."

An assessment of Section 96(1A) of the Act is as follows:

(a) it is satisfied that the proposed modification is of minimal environmental impact, and

Comment:
As indicated below (refer to 6.4A of this report), the proposed development (if modified as proposed) would not have a significant impact on views. Provided that the applicant complies with additional recommended requirements, the modified development would be unlikely to have a significant impact on the visual privacy of surrounding properties. As the overall scale of the dwelling would not be increased from that which was originally approved, the proposed modifications would also not have any additional impacts (e.g. solar access) on surrounding sites.

With regard to the above and subject to the recommended conditions below (refer to Part 7 of this report), Council would therefore be satisfied that the proposed modifications would be of minimal environmental impact.

(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and

Comment:
The requirements associated with condition B1 sought to reduce the overall height and building envelope breaches associated with the proposed development. The partial deletion of condition B1 would mostly reinstate that height, however the overall design of the building would continue to be consistent with what was previously assessed. The overall design of the proposed modifications would therefore not significantly nor fundamentally alter the design of the approved dwelling. Further, the proposed modifications would not change the type and/or use of the development that was originally consented to (i.e. a dwelling house).

With regard to the above, the proposed modifications are considered to be substantially the same type of development to that which was originally approved.

(c) it has notified the application in accordance with:

(iii.) the regulations, if the regulations so require, or

(iv.) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

Comment:
The application has been notified in accordance with Council's notification policy; refer to Part 4 of this report.

(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

Comment:
Submissions objecting to the proposal have been considered by this assessment; refer to Parts 4 and 6 of this report.

Section 147 - Disclosure of political donations and gifts
None disclosed

6.2 State Environmental Planning Policies (SEPPs)

Due to the nature of the proposed changes, there are no SEPPs that are applicable to the subject modification application (the proposed modifications would not necessitate the lodgement of a new BASIX certificate).

6.3 Pittwater Local Environment Plan 2014

Permissibility and zone objectives
The development (as originally approved) was permissible within, and was found to satisfy the objectives of the R2 Low Density Residential zone. The permissibility of the development would not change, and the development would continue to satisfy the more contemporary objectives of the R2 zone, which for reference are as follows:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.*

Despite the above, some zone objectives are discussed further below.

Assessment of LEP standards and requirements
Note: Only development standards applicable to the proposal have been assessed.

Tables of Compliance:

T - Can the proposal satisfy the technical requirements of the control?	Y – Yes
O - Can the proposal achieve the control outcomes?	**N** – No
N - Is the control free from objection?	N/A or Not applicable

Clause	Numerical Standard	Numerical Proposal	T	O	N
Pittwater Local Environmental Plan 2014					
4.3 Building Height	Maximum 8.5m	Maximum proposed height: 8.78m See discussion below	**N**	Y	**N**
4.6 Exceptions to Development Standards			Y	Y	Y

Clause 4.3 Building Height

Information submitted with the subject modification application indicates that the proposed dwelling (as modified) would comply with the height standard, though the maximum "reduced" height of the dwelling is not specified.

A review of the original application suggests that the proposed building height was incorrectly calculated, as it measured the height of the dwelling from natural ground level, instead of the "existing" ground level of the former dwelling's lower-ground level in accordance with the "building height" definition within the LEP. While the breach of the standard was not addressed within the planning report for the original approval, the recommended changes to the proposed building height as part of consent condition B1 would have reduced the height of the dwelling so that it complied with the height standard.

Figure 4: The approximate location of where the height standard would be breached (indicated by the red box). For reference, the maximum ridge height of the roof is indicated by the green lines.

Despite a proposed 200mm reduction in the height of the light wells, the restoration of the original building height through the proposed modifications to condition B1 would result in a maximum building height of 8.78m (i.e. a 280mm, or a 3.3% variation to the standard); due to the proposed slope of the roof the size of the noncompliance would progressively decline to a point where the building height would otherwise comply with the 8.5m height standard. The breach occurs within a small (i.e. approximately 6m^2) section of the western light well, and would be situated below the maximum proposed ridge height of the wells (refer to figure 4 above). With regard to the assessment of Clause 4.6 of PLEP 2014 (below) and the likely design impacts of modifying only the noncomplying part of the roof, it is recommended that the pitch of the roof be changed so that the height of the light wells is reduced by a further 280mm (i.e. to a maximum RL of 40.07) so that the height of the dwelling complies with the height standard.

4.6 Exceptions to Development Standards

As indicated above, the subject modification application proposes a variation to the building height standard. The noncompliance has not been acknowledged, however as the subject application seeks to modify an existing consent pursuant to Section 96(1A) of the *Environmental Planning and Assessment Act*, the applicant is not required to seek a written variation to the standard pursuant to Cl. 4.6 of PLEP 2014. Regardless, the consent authority is required to consider the provisions of Cl. 4.6 where applicable; this has been undertaken as follows:

4.6 (3)(a) Is compliance with the development standard is unreasonable or unnecessary in the circumstances of the case?

In the absence of a written statement, reasons demonstrating why compliance with the development standard is unreasonable or unnecessary have not been provided. The proposed noncompliance would not have significant and/or adverse impacts on surrounding sites, however with regard to:

1. A lack of topographical and/or environmental constraints;
2. The design and substantial size of the development (which includes notable excavation and ceilings heights that are well beyond minimum requirements); and
3. A design that could be readily modified to comply with the height standard without compromising its design and/or function,

it is disagreed that compliance with the standard would be unreasonable and/or unnecessary in this instance. It is therefore recommended that the roof be slightly lowered (i.e. by 280mm) to comply with the standard.

4.6 (3)(b) Are there sufficient environmental planning grounds to justify contravening the development standard?
Sufficient environmental planning grounds have not been provided by the applicant. As assessed below, the proposed modifications to consent condition B1 would largely restore notable breaches of the building envelope, and a breach of the standard in its current form would contribute towards this noncompliance. With regard to potential site constraints and the ability to slightly modify the dwelling to comply with the standard, there are not considered to be sufficient environmental planning grounds to warrant the contravention of the standard.

4.6(4)(a) Is the proposed development in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone?
With regard to the assessments of the original consent and the subject application, the proposed development would generally satisfy the objectives of Clause 4.3 (Height of Buildings) of PLEP 2014 and those of the R2 Low Density Residential zone. As assessed above, the noncomplying area of the roof would be unlikely to affect views from, and solar access to, surrounding allotments as it would be situated below the maximum ridge height of the light wells.

As assessed below, it has been recommended that the height of the light wells be reduced further so that compliance with the standard would not affect the design and function of the roof.

If such a condition were satisfied and the heights of the light wells were reduced as recommended, then it is likely that the height and scale of the development could be further reduced when viewed from surrounding sites; views from these sites would therefore be further improved and the objectives would be better satisfied. Reducing the height of the light wells would therefore be in the public interest.

4.6(4)(b) Has the concurrence of the Secretary has been obtained?
Concurrence of the Secretary is not required.

In summary, while not specifically proposed the subject development application would propose a small variation to the building height standard within Clause 4.3 (height of buildings) of Pittwater Local Environment Plan 2014. While the variation would not adversely affect surrounding sites, it is has not been demonstrated, nor would it be agreed, that compliance with the standard is unreasonable and/or unnecessary. Further, while the development would broadly satisfy the objectives of both the standard and the zone, the development would likely better satisfy such objectives were the height reduced so that it complied with the standard.

Due to the proposed design of the roof, any requirement to reduce the noncomplying part of the light wells so that it complied with the light well would likely have an adverse impact on the design of the roof and the function of the light wells. Further, if only the western (i.e. the noncomplying) light well were modified, then the roof would not be of a single plane as proposed by the applicant. It is therefore recommended that a condition seek a reduction in the pitch of the light well roof so that the ridge height of the light wells is reduced by 280mm (i.e. to a height of RL 40.07).

6.4 Pittwater 21 Development Control Plan:

Note: Only development controls applicable to the proposal have been assessed.

Refer below to a table of compliance for applicable controls under the DCP.

Clause	Numerical Standard	Numerical Proposal	T	O	N
Pittwater Local Environmental Plan 2014					
C1.1 Landscaping		**Planner comment:** The subject application does not propose changes to landscaping. As assessed under P21 DCP Part C1.5 (below) however, the applicant has removed vegetation along the side and rear boundaries which approved plans suggest were to be retained. Details regarding landscaping specifics (i.e. locations, heights, etc.) are discussed below, however the recommended condition will require that species selection is consistent with DCP requirements.	Y	Y	Y
C1.3 View Sharing		Refer to assessment below.	Y	Y	**N**
C1.4 Solar Access		The original proposal complied with solar access requirements. As the proposed modifications include a small reduction in building height, there would be no additional solar access impact.	Y	Y	Y
C.5 Visual Privacy		Refer to assessment below.	Y	Y	**N**
D10.1 Character as viewed from a public place		While submissions objected to the proposed bulk and scale of the development, the proposed modifications would not change the primary facade of the dwelling from what was originally assessed.	Y	Y	**N**
D10.11 Building Envelope		Refer to assessment below.	**N**	Y	**N**

6.4A Detailed discussion of issues associated with Pittwater 21 Development Control Plan:

C1.3 View Sharing

NOTE: As indicated above, it recommended that the height of the dwelling be reduced by a further 280mm so that the dwelling complies with the height standard. As the height noncompliance was identified following the erection of the height poles, the following view-loss assessment has been based on a proposed maximum ridge height of RL40.35; a recommended condition would however reduce the maximum building height to a maximum ridge height of RL40.07 (i.e. the view loss assessment is based on a slightly greater building height than what is recommended).

As indicated within this report, both the subject site and the surrounding area reside on a slope that falls in a south-to-north direction towards the Newport town centre and beach area. Some sites have views of the ocean, beach, headland and associated foreshore areas, and as indicated within Part 4 of this report, two submissions have been received which both object to the proposed modifications due to impacts on such views.

In determining the extent of potential view loss to adjoining and nearby properties, the four planning principles outlined within the NSW Land and Environment Court *Tenacity Consulting v Warringah Council* [2004] NSW LEC 140 have been considered.

As noted within Part 4 of this report, the submissions objected to a number of issues including incomplete and potentially inaccurate information. As indicated above, the assessing officer visited both sites from which submissions were received; these inspections coincided with the erection of surveyor-certified height poles on the subject site to observe the level of impact that the modified development would have on views as observed from those adjoining sites. It should also be noted that the view-loss assessment of the originally approved development was based on known levels, and did *not* include height poles; the erection of the surveyor-certified height poles as part of this assessment would therefore facilitate an accurate view-loss assessment, the outcomes of which may vary to the original assessment.

1. Nature of the view to be affected

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

Comment:

Views that would be affected would be from areas at the rear of 8 and 10 Gertrude Avenue towards the north (refer to figure 3 for an illustration of where these site are in relation to the subject site). The views to be affected from both properties consist of views of vegetation beyond the subject site, the ocean, Newport town centre/beach and Bilgola Headland. Such existing views are partially obscured by vegetation.

Figure 5: Views towards the north from ground floor decks of 8 Gertrude Avenue (top) and 10 Gertrude Avenue (bottom).

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

Comment:
8 Gertrude Avenue, Newport:
Views that would be affected would be obtained from a number of areas within this property, and include the ground floor balcony, the adjoining kitchen, living area and bedroom, the lower ground floor area balcony and areas of the rear setback. Views that would be affected would be obtained from sitting and standing positions. The affected views are partially affected by existing vegetation.

10 Gertrude Avenue, Newport:
Views that would be affected would be obtained from a number of areas within this property, and include rear decks/balconies on all three levels and adjoining rooms (including living rooms, two bedrooms, a bathroom and studio). Views that would be affected would be obtained from sitting and standing positions on the ground and lower-ground levels and from standing positions on the first floor. As with 8 Gertrude Avenue, the affected views are also partially affected by existing vegetation.

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

Comment:
8 Gertrude Avenue, Newport:
As indicated above, views are capable of being obtained from a number of areas at the rear of this dwelling; the dwelling would therefore account for the greatest loss of views from these areas.

As indicated by figure 7 (below), the most significant views (i.e. ocean, foreshore and headland views) would not be visible from the lower-ground floor/rear setbacks areas due to existing vegetation, therefore any views from this area will not be discussed further. Due to its higher elevation, views from the rear of the ground floor would be more significantly affected; areas/items of significance that would be affected vary depending on the direction of views from this area and are outlined as follows:

- Views to the north/northeast:
  Residential development and vegetation on surrounding sites, some water views and views of Newport Beach. Views of the latter two items are filtered by vegetation, and the land/water interface on the beach is mostly obscured by vegetation. The level of impact is largely similar from both sitting and standing positions, though views of Bilgola Headland are unlikely to be affected. Refer to figure 7 (below).
- Views to the north/northwest:
  Residential development and vegetation on surrounding sites and views of Newport town centre. Views of the latter two items are filtered by vegetation, and the level of impact would be higher from a sitting position. Refer to figure 6 (below).

With regard to above, both the first and second planning principles (i.e. those relating to the value of certain views and retention of "sitting" views) and the views that would be maintained from this site, the extent of impact would likely be categorised as minor.

Figure 6: The view from the eastern side of the ground floor deck. The location of the height poles and the area between them are identified by the red lines.

Figure 7: The view from the western side of the ground floor deck. The location of the height poles and the area between them are identified by the red lines.

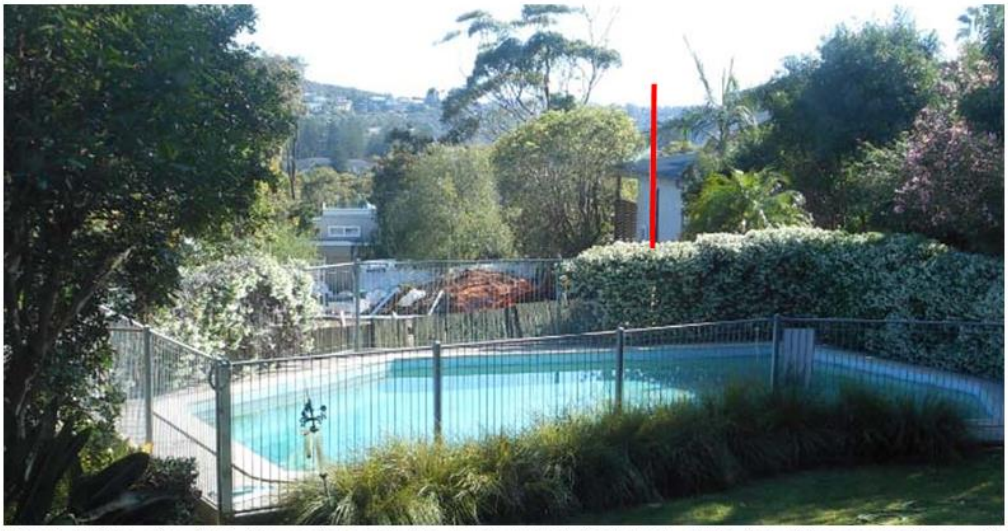


Figure 8: The view from the western side the lower ground floor deck at the top of the rear setback. The location of the eastern-most height pole is identified by the red line.

10 Gertrude Avenue, Newport:
As indicated above, views are capable of being obtained from a number of areas at the rear of this dwelling, though such views would however be obtained from a larger number of areas. As with 8 Gertrude Avenue, the proposed dwelling would account for the greatest loss of views from these areas.

As indicated by figure 9 (below), the most significant views (i.e. ocean, foreshore and headland views) would not be visible from the lower-ground floor/rear setbacks areas due to existing vegetation, therefore any views from the lower ground floor and rear setback areas will not be discussed further. Due to their higher elevation, views from the rear of upper two floors would be more significantly affected; unlike 8 Gertrude Avenue however, this site is located to the southwest of the subject site, therefore views of some areas (i.e. Newport Beach and the associated foreshore areas) are not obtained by looking immediately north across the subject site. With regard to the above, views to the north/northwest would not be affected by the proposed development, and views towards the northeast that may be affected by the modified development are outlined as follows:

- Ground floor:
  Residential development, vegetation on surrounding sites and some water views, which are filtered by the aforementioned vegetation. Views of Newport Beach would not be affected. There would not be a notable difference between standing and sitting views. Refer to figures 10 and 11 (below).
- First floor:
  Due to vegetation on surrounding sites, the level of impact is more pronounced on the eastern side of the building. Views from this area would be of residential development and vegetation on surrounding sites. Due to the level of elevation above the subject site, water/beach/foreshore views would not be affected by the modified development. Refer to figure 12 (below).

With regard to above, both the first and second planning principles (i.e. those relating to the value of certain views and retention of "sitting" views) and the views that would be maintained from this site, the extent of impact would likely be categorised as negligible to minor.

Figure 9: The view from the western side of the lower-ground floor deck at the top of the rear setback. The western height pole is obscured by vegetation, therefore the location of the eastern height pole and the tallest point of the dwelling are identified by the red lines.

Figure 10: The view from the north-eastern side of the ground floor (a bedroom). The western height pole is obscured by vegetation, therefore the location of the eastern height pole and the tallest point of the dwelling are identified by the red lines.

Figure 11: The view from the eastern side of the rear ground floor deck. The locations of the height poles and the tallest point of the dwelling are identified by the red lines.

Figure 12: The view from the north-eastern side of the first floor (a bedroom balcony). The locations of the height poles and the tallest point of the dwelling are identified by the red lines.

4. The reasonableness of the proposal that is causing the impact

"*The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. 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:

Based on the above, most of the proposed development would not have significant and/or adverse impacts on views from surrounding sites. The part of the proposed dwelling that would contribute most significantly to any impact on views would be the light wells (i.e. the projecting roof element) on top of the building.

As indicated above, the height of the modified development would breach the height standard, though a condition is recommended to ensure compliance with the 8.5m height limit. The proposed amendments would largely reinstate a notable breach of the building envelope; there are two major elements to this breach, and in relation to views these are assessed as follows:

- The most substantial parts of the envelope noncompliance relate to the front-most part of the second floor; as this part of the dwelling would be situated both forward and below the tallest part of the building, it is highly unlikely to affect views of notable areas (i.e. the ocean, Newport Beach, etc.).
- Consent condition no. B1 sought a 2 metre reduction in the width of the light wells (i.e. a reduction of approximately 1m per well) as part of a number of modifications to reduce the size of the envelope breach. Based on submitted information and observations by the current assessing officer, it is disagreed that reducing the width of the light wells by 1 metre would notably improve the views from surrounding sites for the following reasons:
    - Existing vegetation within properties in Walworth Avenue would likely obscure any views that may otherwise be made available to the residents of 8 Gertrude Avenue through reductions to the width of the light wells (refer to figures 6 and 8); and
    - Any reduction to the width of the light wells would be unlikely to improve views available to the residents of 10 Gertrude Avenue. Any reduction to the western envelope would have a negligible impact as views towards the northeast of the subject site from this neighbouring site would still be directed through the proposed dwelling. Further, development at 43 Walworth Avenue and vegetation further towards the northeast would obscure any views that may otherwise be made available through reductions to the width of the eastern light well (refer to figures 10 and 11).

In summary, the proposed modifications seek to reinstate a previously proposed noncompliance that was to be reduced via the imposition of consent condition B1. While the proposed modification would mostly restore the size of the original noncompliance, it would not significantly affect views from surrounding sites and measures designed to remove or minimise such noncompliances would be unlikely to notably alter or improve views from surrounding sites. Further, it is recommended that the maximum ridge height of the development be reduced by a further 280mm which would further reduce the level of impact. The view impact of the development (if modified as recommended) would be considered to be acceptable and the view sharing reasonable.

In summary, both submissions expressed concerns regarding view loss. A comprehensive assessment of potential view-sharing impacts from adjoining sites was undertaken in accordance with both the DCP and relevant Land and Environment Court Planning Principles. This assessment indicated that the proposed development would likely have some impact on views from adjoining sites, however in accordance with the *Tenacity* principles the levels of impact are considered to be both acceptable and reasonable.

C1.5 Visual Privacy

Both submissions have raised issue with adverse visual privacy impacts associated with the proposed development. The planning assessment (and subsequent review by the Development Unit) of Development Application No. N0021/17 found that the proposed development would satisfy visual privacy provisions. Despite the changes proposed by the subject modification application, the locations of the windows on the rear elevation would not be altered; despite condition B1 requiring some changes to the floor levels, due to the limited height difference the proposed amendments would not change the outcomes of the original planning assessment. With regard to the above, the windows on the rear elevation will not be considered further by this assessment.

Despite the above, inspections of the site and discussions with the objectors noted that the applicant has removed landscape screening along the side and rear boundaries of the subject site. While there were no conditions explicitly referring to such treatments, the approved plans repeatedly indicated that "established screen planting" was to be situated along these boundaries.

It is agreed that the removal of such vegetation would result in adverse privacy impacts for both of the objector's sites, particularly 8 Gertrude Avenue.

The originally approved plans related to established landscape screening, however it is unclear whether such landscaping is to be reinstated; a new condition is therefore recommended that would require dense screening vegetation to be planted along the rear and western side boundary of the subject site. Such a condition would require such vegetation to consist of locally native species (thereby satisfying natural environment development controls) Further, the condition would require that the mature heights of such vegetation be maintained at:

- Four metres along the rear boundary; and
- Four metres along the western boundary (with regard to the slope),

to prevent such vegetation growing to a height that may adversely affect views from sites to the rear of the subject site.

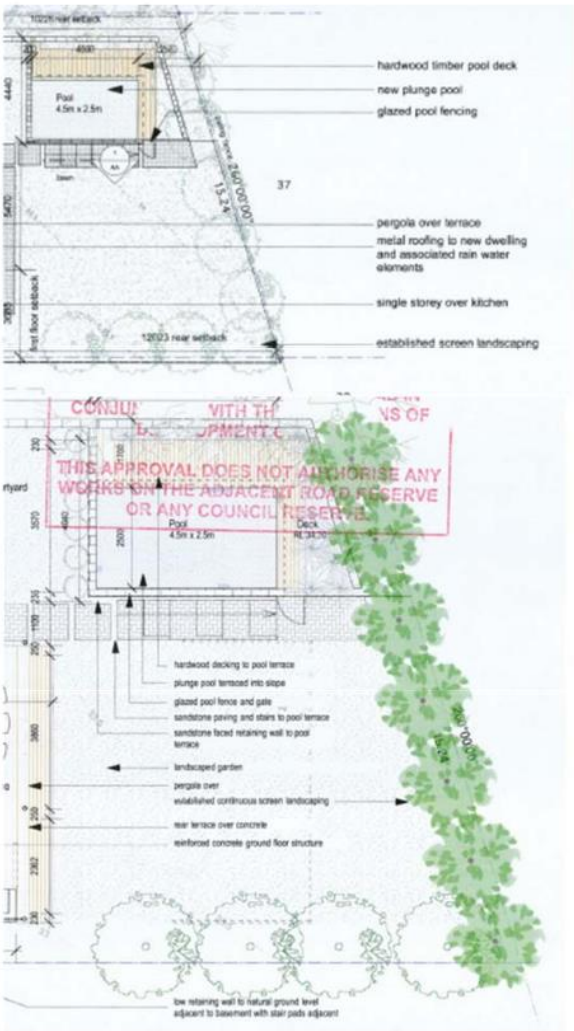


Figure 13: Extracts from the approved Site Plan (top) and Ground Floor Plan (bottom); note the references to "established screen planting" and "established continuous screen planting" on the respective plans.

Further to the above, it is acknowledged that the rear-facing windows within the light wells would direct views from first floor areas (which includes a large living area) towards sites to the rear of the subject site. Due to the heights of the light wells (and noting that the applicant wishes to delete a condition governing their width), it is likely that any views from these windows would look over the conditioned landscape treatments outlined above. Likely views through these windows would be narrow, however they may still promote some views towards sensitive living areas of adjoining sites. With regard to the above and considering that:

- The windows have been proposed for solar access purposes; and
- No views would be obtained from the these windows,

it is recommended that a condition be imposed that would require the light well windows to be fitted with frosted and/or obscured glass to prevent any potential for overlooking of adjoining sites.

With regard to the above, the proposed modifications would satisfy the outcomes of the controls and are therefore considered to be satisfactory, subject to recommended conditions.

D10.11 Building Envelope

As indicated within Part 1 of this report, the subject modification application proposes the deletion of parts of consent condition B1, which were originally imposed in response to notable noncompliances to Part D10.11 of Pittwater 21 DCP.

The modifications to condition B1 would restore the original noncompliances, except for a 200mm reduction in the height of the proposed light wells on the roof; the locations and sizes of the noncompliances are indicated within figure 14 (right).

Figure 14: Extracts from the working plans which show the locations and sizes of the envelope noncompliances. **Note:** These do not indicate proposed and recommended reductions to the heights of the light wells.

The major issues originally identified with the noncompliance related to building bulk and scale and view loss. As indicated within the assessment of Part C1.3 of Pittwater 21 DCP (see above), the proposed modifications are unlikely to adversely and/or unreasonably affect views from surrounding properties. While it is acknowledged that bulk and scale on the eastern elevation would be notable, it is not incompatible with existing development at 43 Walworth Avenue (i.e. the site immediately to the east), and the visual impact on that side of the development would be also partially mitigated by a large street tree (evident in figures 2 and 5 of this report), which would assist in filtering the most evident part of the noncompliance from public areas (i.e. the Walworth Avenue road reserve).

Aside from the above, the proposed noncompliance would generally satisfy other applicable control outcomes, as there would be no further privacy, amenity and/or solar access issues associated with the proposal. While vegetation removal is not associated with the noncompliance, conditions were imposed as part of the original consent that would require:

- The planting of at least three canopy trees (including two within the front setback); and
- Screen planting that would to screen/filter the proposed development from the road reserve.

Further, a new condition is also recommended that would require additional planting within the rear setback that, while recommended for privacy purposes, would also assist in screening/filtering the development from adjoining residential sites.

As indicated above, it recommended that the height of the dwelling be reduced by a further 280mm; the change would not broadly change assessment undertaken above, however it would reduce the level of noncompliance associated with the light wells.

If recommended conditions are satisfied, then the proposed development would broadly satisfy the outcomes of the control. The proposed noncompliance is therefore considered to be supportable.

6.0 CONCLUSION

Pursuant to Section 96(1A) of the *Environmental Planning and Assessment Act 1979,* the subject modification application seeks to modify a consent condition B1; the elements that are proposed to be deleted sought to reduce the height, bulk and scale of an approved dwelling house.

As indicated within Part 4 of this report, two submissions have been received which object to the proposal based on a range of issues that would be associated with the proposed changes to existing consent conditions.

An assessment of the modified proposal found that the proposed modifications would be capable of broadly satisfying the requirements of Pittwater 21 DCP and Land and Environment Court planning principles relating to view loss. It is however recommended that additional conditions be imposed so that the development satisfies the height standard and addresses privacy concerns raised by the submissions, in addition to landscaping works that may not have been undertaken in accordance with the original consent.

Provided that both existing and recommended conditions are satisfied, the proposed modifications to the consent would be of minimal environmental impact and are therefore not expected to adversely affect adjoining properties, surrounding sites and/or the local environment. Further, the proposed modifications would be consistent with the original consent and are considered to be in the public interest.

With regard to the above, the subject modification application is recommended for approval.

7.0 RECOMMENDATION

That Council as the consent authority pursuant to Section 96(1A) of the Environmental Planning & Assessment Act 1979 modify Development Consent N0021/17 (which approved the demolition of an existing dwelling and the construction of a new dwelling) at 41 Walworth Avenue, Newport (Lot 31, DP 9877) as per the recommended modifications below.

1. The list of approved plans are to be modified as follows (modified plans are in **bold** for reference):
   - **Site Plan, A-001 Amendment H, dated 29 November 2017, prepared by Simon Rosewell Pty Ltd**
   - Lower Ground Floor Plan, A-100, Amendment G, dated 16 May 2017, prepared by Simon Rosewell Pty Ltd
   - Ground Floor Plan, A101, Amendment G, dated 16 May 2017, prepared by Simon Rosewell Pty Ltd
   - First Floor Plan, A102, Amendment G, dated 16 May 2017, prepared by Simon Rosewell Pty Ltd
   - **Elevations 1, A200, Amendment H, dated 29 November 2017, prepared by Simon Rosewell Pty Ltd**

- **Elevations 2, A201, Amendment H, dated 29 November 2017, prepared by Simon Rosewell Pty Ltd**

- Schedule of Finishes, prepared by Simon Rosewell Pty Ltd, not dated;
- BASIX Certificate, 783585S, dated 19 December 2016

2. Consent Condition No. B1 is to be modified as follows (elements to be deleted are struck through):

The following amendments shall be made to the approved plans

- ~~*The entire dwelling is to be lowered by 100mm (i.e. a floor level of RL 30.02)*~~
- ~~*The ground level floor-to-ceiling height is to be reduced to 2.7m*~~
- ~~*The rooftop light wells are to be reduced in width to a maximum of 3.0m (when measured at their southern ends) and are to be centralised on their corresponding building elements. The walls of the light wells can be sloped towards the external walls of the dwelling to avoid internal bulk heads within the rooms.*~~
- ~~*This will result in the RLs of the dwelling being as follows: Garage – RL 30.02, rumpus – RL 30.20, ground floor – RL 32.9, first floor – RL 35.9, ridge – RL 40.15.*~~
- *All decking on the eastern side of the in-ground pool in the rear yard is to be deleted and replaced with landscaped area.*
- *The side path on the eastern side of the dwelling is to be no more than 1.0m in width. The remaining 500mm of space between the dwelling and the side boundary to be maintained as landscaped area.*

3. Consent condition B21 is to be added as follows:
"*Any windows within the light wells (i.e. the structures protruding from the roof) shall be installed using frosted and/or obscured glass.*"

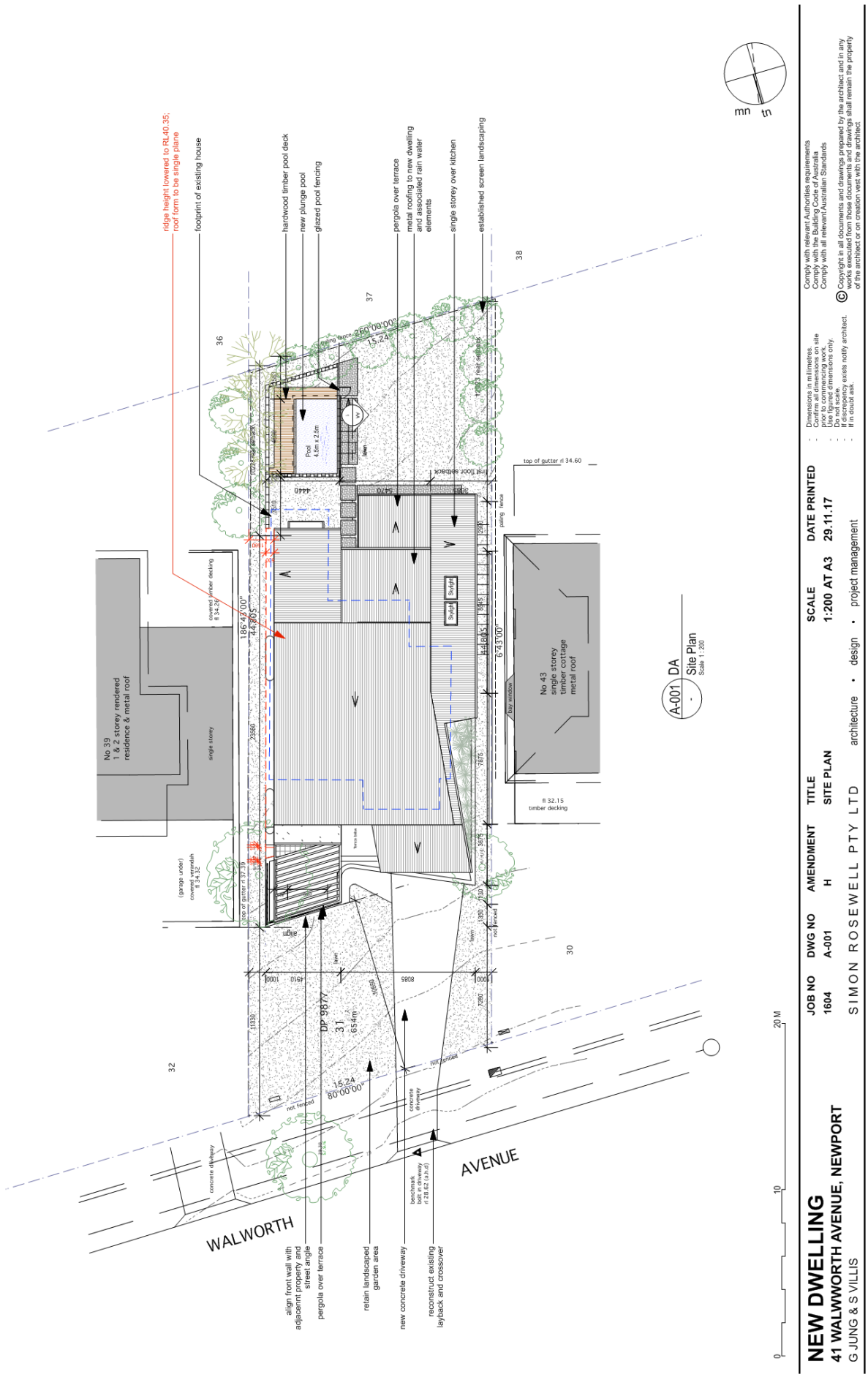
4. Consent condition B22 is to be added as follows:
"*Landscape screening is to be implemented along the entire rear boundary and western boundary of the rear setback area (i.e. the area between the rear building line and the rear property boundary). Such landscape screening shall:*

- *Consist of locally native species;*
- *Be of a density and/or thickness that will permit sufficient visual privacy for residents of the subject development site and surrounding sites; and*
- *Contain selected species that are capable of growing to a mature height of at least:*
  - *Four (4) metres for plants along the rear boundary; and*
  - *Four (4) metres for plans along the west side boundary.*

Such landscape screening shall be maintained for the life of the development so that they do not exceed the heights outlined above. Any plants which die shall be replaced and maintained for the life of the development as outlined by this and/or any other relevant condition within this consent."

5. Consent condition B23 is to be added as follows:
"*The pitch of the roof above the light wells is to be modified to reduce the height of the ridge RL of the light well roof by 280mm to RL 40.07.*"

Tyson Ek-Moller
PRINCIPAL PLANNER
DEVELOPMENT ASSESSMENT


ridge height lowered to RL40.35; roof form to be single plane
footprint of existing house
hardwood timber pool deck
new plunge pool
glazed pool fencing
pergola over terrace
metal roofing to new dwelling and associated rain water elements
single storey over kitchen
established screen landscaping
No 39
1 & 2 storey rendered residence & metal roof
single storey
covered timber decking
covered verandah
(garage under)
top of gutter
No 43
single storey
timber cottage
metal roof
timber decking
top of gutter
Pool
4.5m x 2.5m
Single
Single
DP 9877
31
654m
concrete driveway
WALWORTH
AVENUE
align front wall with adjacenrt property and street angle
pergola over terrace
retain landscaped garden area
new concrete driveway
reconstruct existing layback and crossover
mn
tn
A-001 DA
Site Plan
Scale 1 : 200
0
10
20 M
NEW DWELLING
41 WALWORTH AVENUE, NEWPORT
G JUNG & S VILLIS
JOB NO 1604
DWG NO A-001
AMENDMENT H
TITLE SITE PLAN
SCALE 1:200 AT A3
DATE PRINTED 29.11.17
SIMON ROSEWELL PTY LTD
architecture • design • project management
Dimensions in millimetres.
Confirm all dimensions on site prior to commencing work.
Use figured dimensions only.
Do not scale.
If discrepancy exists notify architect.
If in doubt ask.
Comply with relevant Authorities requirements
Comply with the Building Code of Australia
Comply with all relevant Australian Standards
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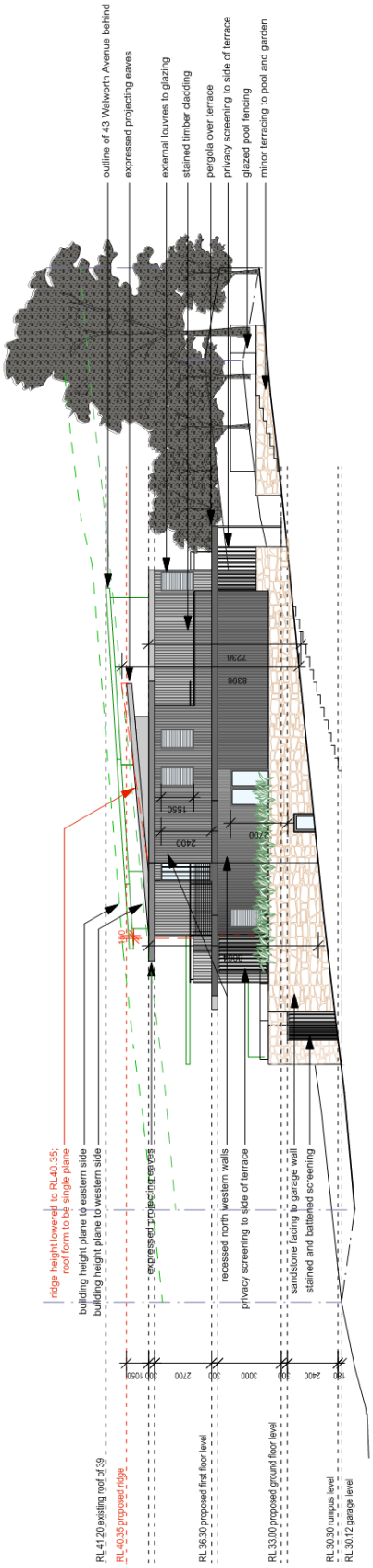
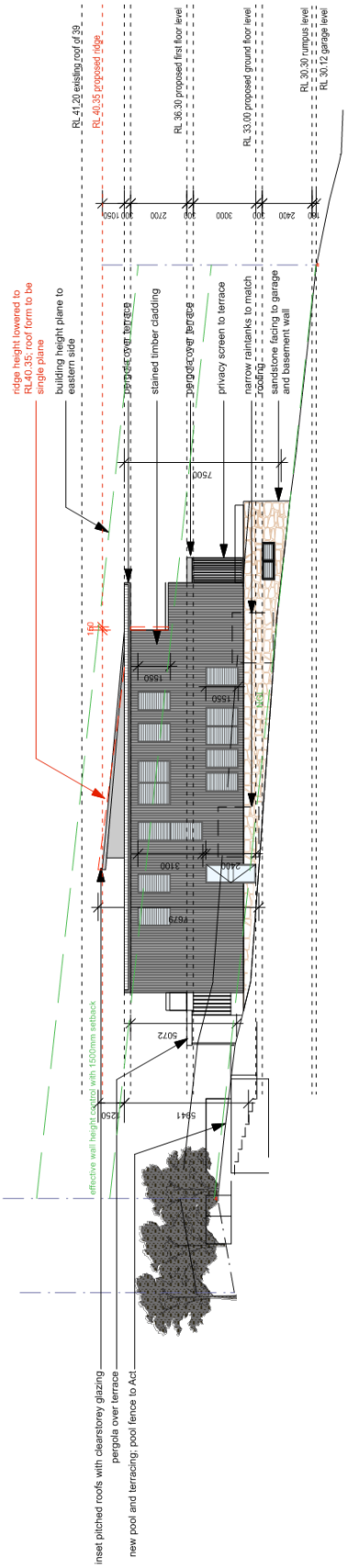


1 Western Elevation
Scale: 1:200



2 Eastern Elevation
Scale: 1:200

0 10 20 M

NEW DWELLING
41 WALWORTH AVENUE, NEWPORT
G JUNG & S VILLIS

JOB NO	DWG NO	AMENDMENT	TITLE	SCALE	DATE PRINTED
1604	A-201	H	ELEVATIONS 2	1:200 AT A3	29.11.17

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- Dimensions in millimetres.
- Check all dimensions on site prior to commencing work.
- Use figured dimensions only. Do not scale.
- If discrepancy exists notify architect. If in doubt ask.

Comply with relevant Authorities requirements
Comply with the Building Code of Australia
Comply with all relevant Australian Standards

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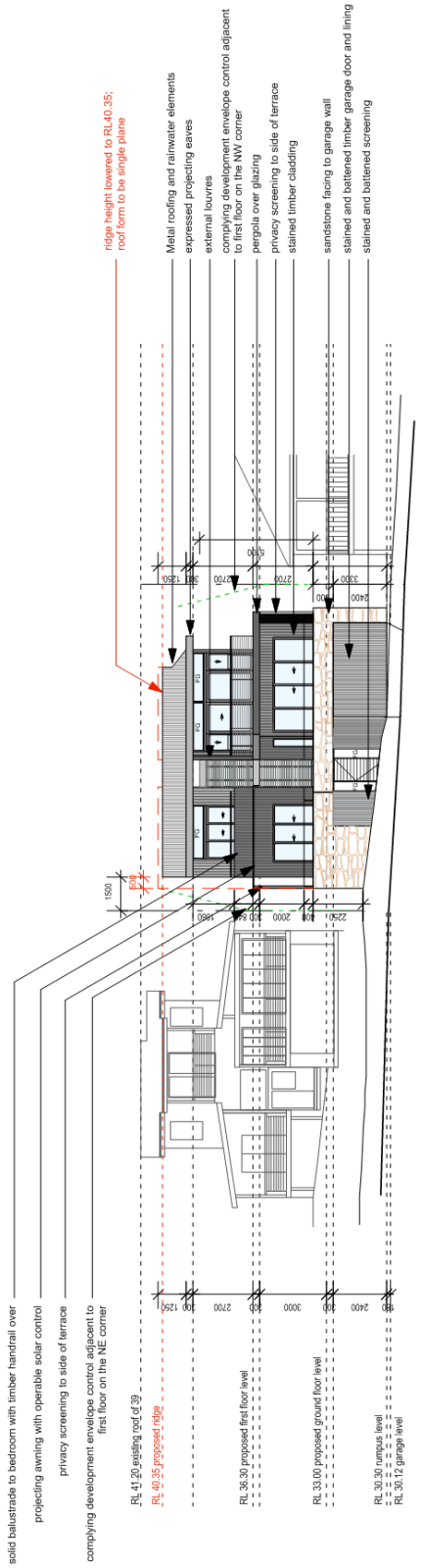
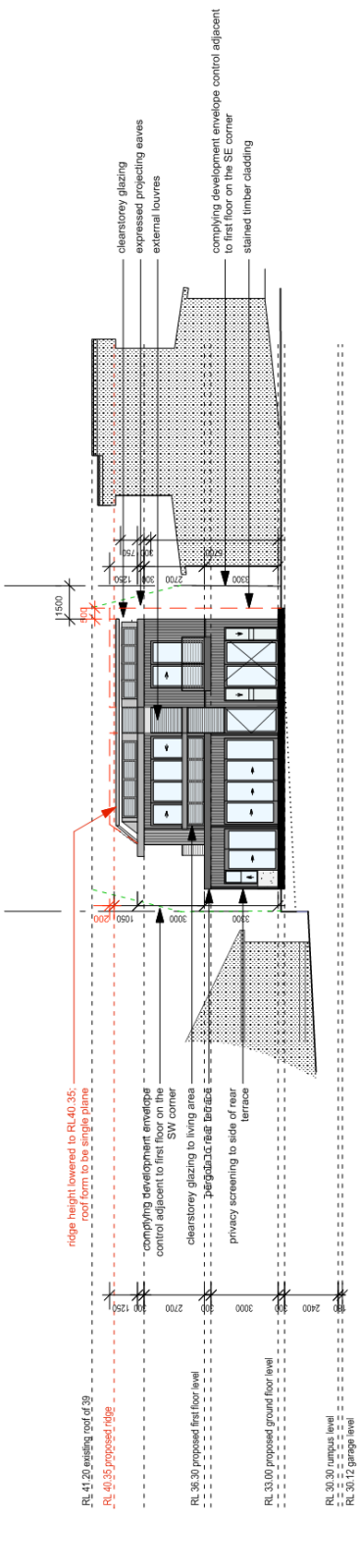


1 Northern Elevation
Scale: 1:200



2 Southern Elevation
Scale: 1:200

0 10 20 M

NEW DWELLING
41 WALWORTH AVENUE, NEWPORT
G JUNG & S VILLIS

JOB NO	DWG NO	AMENDMENT	TITLE	SCALE	DATE PRINTED
1604	A-200	H	ELEVATIONS 1	1:200 AT A3	29.11.17

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- If in doubt ask.

Comply with relevant Authorities requirements
Comply with the Building Code of Australia
Comply with all relevant Australian Standards

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ITEM 3.2	**DA 436/2008 - 5 COMMONWEALTH PARADE, MANLY - SECTION 96(2) APPLICATION TO MODIFY A RESIDENTIAL FLAT BUILDING - PART 4**
REPORTING MANAGER	**Rodney Piggott**
TRIM FILE REF	**2017/516415**
ATTACHMENTS	**1 ⇩Assessment Report** **2 ⇩DDP Plans (Site and Elevation Plans)**

PURPOSE

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

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RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

That pursuant to Section 96 (2) of the Environmental Planning and Assessment Act 1979, the proposed modification to Development Consent No. 436/2008 for a Residential Flat Building – at 5 Commonwealth Parade, Manly be approved subject to the conditions outlined in the report.

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northern beaches council

Development Determination Panel Report

2017/495495

DA No.	436/2008
Site Address	5 Commonwealth Parade, Manly SP11874
Proposal	Section 96(2) application to modify a Residential Flat Building - Part 4
Officer	Claire Downie

SUMMARY:

Application Lodged:	17 October 2017
Applicant:	Baxter and Jacobson Architects
Owner:	Cecil and Isabel Koutsos
Estimated Cost:	$2,000,000
Zoning:	MLEP, 2013 – R1 General Residential
Heritage:	Adjacent to Item 2 Stone Kerbs and Item 98 Residential Flat Building 'Hilder Lea'
NSW LEC:	Not applicable
Notification:	19 October – 6 November 2017
Submissions received:	One
Site Inspected:	5 December 2017
LEP (4.6) Variations proposed:	Floor Space
DCP Variations proposed:	Setback Front
Recommendation:	Approval

Subject Property and surrounding area

The subject property is commonly known as 5 Commonwealth Parade, Manly and legally known as SP 11874. The site is located on the western side of Commonwealth Parade. The property is an irregular rectangle in shape, has a frontage of 15.4m to Commonwealth Parade and 9.2m to The Crescent, an average depth of 38.8m and an overall site area of 460m^2. The property currently contains a three-storey residential flat building with vehicular access via an existing driveway from The Crescent to an existing single garage to the rear of the existing dwelling. The property slopes approximately 6m from west to east.

The adjacent property to the north, at 1-3 Commonwealth Parade, is developed with a three-storey residential development. The adjacent property to the south, at 7 Commonwealth Parade, is developed with a seven-storey residential development. Development in this area of Commonwealth Parade consists of residential developments.

Property Burdens and Constraints
There are no burdens or constraints that would preclude the proposed development.

Site History/Background
Recent relevant applications on site include:

- DA211/2004: Demolition and construction of a new four-unit residential flat building, and strata subdivision. Approved by DAU on 29 September 2006.
- DA436/2008: Amendment to the basement level design to minimise the environmental impact. Approved by DAU on 3 March 2009.
- DA436/2008 – Part 2: Section 96 to modify approved Basement additions to three (3) storey Residential Flat Building - involving the conversion of upper level apartment into two apartments - one (1) two (2) bedroom apartment and one (1) one (1) bedroom apartment with changes to the internal wall, door and windows. Withdrawn by the applicant on 13 August 2013.
- DA436/2008 – Part 3: Section 96 to modify approved Basement additions to three (3) storey Residential Flat Building – involving conversion of a car parking space into a storage area, level 1, 2 and 3 extension, pergola extensions to level 2 and level 3, internal alterations, delete planter box on level 1, addition of an dividing screen and changes to window and doors. Approved by DAU on 9 November 2016.

Substantial Commencement
Development Consent No. 436/2008 included works and referenced plans associated with the earlier Development Consent No. 211/2004. Therefore, it is considered that Development Consent 436/2008 included the whole of DA211/2004 and that both consents relate to the same development. On 11 September 2009, geotechnical bore holes were drilled on site in relation to the proposed development, thus physical commencement of works is considered to have occurred prior to the two consents' lapse dates.

Description of proposed development
The proposal seeks approval for the following:

- Reduction in four units to three;
- Reduction in parking requirement and introduction of a car stacker;
- Reduction in basement level and adjustment of all other floor levels (increased floor to ceiling height, no additional overall height);
- Changes to windows, doors, façade and eastern balconies;
- Internal reconfiguration;
- Addition of privacy screening to western balconies; and
- Addition of hydrant and drencher booster assembly cupboards.

Internal Referrals

Engineering Comments
Council's Engineer offered no objections to the proposal.

Building Comments
Council's Building Surveyor offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

Landscaping Comments
Council's Landscape Officer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

Heritage Comments
Council's Heritage Officer offered no objections to the proposal.

Waste Comments
Council's Waste Officer offered no objections to the proposal.

Traffic Comments
Council's Traffic Engineer offered no objections to the proposal, subject to the imposition of recommended conditions of consent.

Driveway Comments
Council's Driveway Officer offered no objections to the proposal.

External Referrals

AUSGRID
The proposal was referred to Ausgrid. No comments from Ausgrid had been received by Council at the time of writing this report.

Planning Comments

Environmental Planning & Assessment Act 1979 – Section 79(C)(1)
In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

(a) the provisions of:
(i) any environmental planning instrument, and

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005:
The subject property is located within the Sydney Harbour Catchment therefore the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(1) (aims of the SREP), Clause 13 (nominated planning principles) and Clause 21 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development and the Apartment Design Guide.
The provisions of SEPP 65 and the ADG do not apply to this development, as the modifications result in three dwellings.

Manly Local Environmental Plan 2013
The subject site is located in Zone R1 General Residential under the Manly LEP 2013. The proposed development is permissible within the zone with consent. An assessment of the proposal against the objectives of the Zone is included below:

Zone R1 General Residential

Objectives of zone

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

The proposed modifications maintain the residential use of the site.

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

The proposed modifications maintain the existing variety of housing types and densities in the locality.

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

Not applicable. The proposed modifications maintain the residential use of the site.

Part 4 Principal development standards
The provisions of the Manly LEP 2013 have been referred to as part of the assessment:

4.	Principal Development Standards	Requirement	Approved	Proposed	Complies	Comments
4.3	Height of buildings	11m	15.05m (See note below)	11.4m	No	No additional non-compliant height proposed.
4.4	Floor Space Ratio	0.75:1 345m^2	1.27:1 584.2m^2	1.3:1 601m^2	No	See comment below.

Note: The previous assessment recorded an overall building height as measured to the proposed excavated ground level, rather than the existing natural ground level. The overall building height has been amended as part of this assessment, in accordance with the definition of building height within the Manly LEP 2013.

4.6 Exceptions to development standards
Whilst the modification application will result in a floor space ratio that exceeds the maximum permitted by Clause 4.4 of the MLEP 2013, the application does not strictly need to address the requirements of Clause 4.6. This application has been made under Section 96 of the Environmental Planning and Assessment (EP&A) Act 1979, which is a free-standing provision that in itself authorises the development to be approved notwithstanding any breach of development standards. Section 96 is subject to its own stand-alone tests (such as substantially the same test and consideration of all relevant s.79C matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application. Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 96 modification applications. Nevertheless, an assessment of the variation is as follows:

Floor Space Ratio

The following assessment of the variation to Clause 4.4 – Floor space ratio development standard and is assessed taking into consideration the questions established in Winten Property Group Limited v North Sydney Council (2001) NSW LEC 46.

Requirement	0.75:1 (345m^2)
Proposed	1.3:1 (601m^2)
Is the planning control in question a development standard?	Yes
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical
If numerical enter a % variation to requirement	74.2% to development standard 2.8% to existing non-compliance

The proposal must satisfy the objectives of Clause 4.4 – Floor space ratio, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the MLEP 2013. The assessment is detailed as follows:

Is the planning control in question a development standard?

The prescribed floor space ratio limitation pursuant to Clause 4.4 – Floor space ratio of the MLEP 2013 is a development standard.

What are the underlying objectives of the development standard?

The underlying objectives of the standard, pursuant to Clause 4.4 – Floor space ratio of the MELP 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 modifications to the approved development are minor and predominantly internal. The development is consistent with the existing and desired streetscape character, in that the street contains a number of examples of residential flat buildings of comparable scales.

(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 modifications to the approved development do not obscure any 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 proposed modifications provide the same side setbacks and result in general building envelope as the approved development, thereby providing an appropriate visual relationship between the existing development surrounding the site and the proposed works on site.

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

Comment: The proposed modifications to the approved development do not unreasonably impact upon the use or enjoyment of adjacent properties 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 subject site is zoned R1 General Residential.

What are the underlying objectives of the zone?

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the R1 General Residential zone.

The underlying objectives of Zone R1 General Residential:

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

The proposed modifications maintain the residential use of the site.

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

The proposed modifications maintain the existing variety of housing types and densities in the locality.

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

Not applicable. The proposed modifications maintain the residential use of the site.

Is the variation to the development standard consistent with the objectives of Clause 4.6 of the MLEP 2013?

(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.

Comment: The proposed development provides for an appropriate level of flexibility in applying the floor space ratio development standard.

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Comment: The proposed development results in a better outcome by providing allowing for reconfiguration of the approved development, without resulting in unreasonable amenity impacts to the subject site or adjacent sites.

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

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

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

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

Comment: As detailed, a written request is not required in this case. Nevertheless, the applicant has provided the following justification for the variation:

"1.0 INTRODUCTION

This variation under Clause 4.6 of Manly Local Environmental Plan 2013 (LEP 2013) has been prepared by BJA.

It is submitted to Manly Council in support of a S96 Development Application (DA) for the redevelopment of 5 Commonwealth Pde Manly for residential purposes.

Clause 4.6 of Manly LEP 2013 allows Council to grant consent for development even though the development contravenes a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

This Clause 4.6 variation should be read in conjunction with the original Statement of Environmental Effects (SEE) prepared by BJA dated September 2017.

2.0 CLAUSE 4.6 FRAMEWORK

Clause 4.6 (Exceptions to Development Standards) of the LEP allows the consent authority to grant consent for development even though the development contravenes a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard:

- *That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;*
- *That the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard; and*
- *That 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 consent authority's satisfaction as to those matters must be informed by the objective of providing flexibility in the application of the relevant control.

3.0 DEVELOPMENT STANDARD PROPOSED TO BE VARIED

The development standard that is sought to be varied as part of this application is Clause 4.4 of LEP 2013, relating to Floor Space Ratio of the building. Under Manly LEP 2013 the site has a maximum FSR of 0.75:1.

4.0 IS THE PLANNING CONTROL IN QUESTION A DEVELOPMENT STANDARD?

'Development Standards' are defined under Section 4(1) of the EP&A Act as follows:

> *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,…*

The maximum FSR control under Clause 4.4 of the LEP is clearly a development standard.

5.0 EXTENT OF VARIATION SOUGHT

The FSR for the site is 0.75:1.

The FSR proposed in this S96 application is 1.3 : 1

The approved FSR in the original approval dated March 2004 was 1.25 :1

This equates to a 66% variation on the Floor Space Ratio Development Standard of Clause 4.4 of the Manly LEP 2013 and a 4% variation on the existing non-compliance. Given the existing context of the site and the minor increase to gross floor area proposed

within the approved building envelope, variation to the Floor Space Ratio development standard can be supported.

6.0 JUSTIFICATION FOR CONTRAVENTION OF DEVELOPMENT STANDARD

The original FSR non-compliance was approved on the basis that the existing dwelling already exceeds the FSR. In the context of the site, the FSR non-compliance has minimal impact. The additional areas is largely due to increases on level 3 which extends further to the front and back of the site. As such it does not impact on view corridors from the dwellings behind or privacy, bulk and overshadowing of the adjoining properties.

The SEE by Planning Overload (Paul Drake, submitted in the original Application and dated March 2004, noted that the existing house FSR is 1.11:1 and the subsequently approved scheme had a FSR of 1.25:1. (see excerpt below)

4.2.4 Density

The development provides medium/high density urban housing. The total site area is 461.69 square meters and the gross floor area is 581 square metres, resulting in a floor space ratio of 1:25.1. The existing FSR is 1.11:1 with a gross floor area of 499.6 square metres.

The current proposal of 1.3:1 is a 4% increase on the original approval and a 15% increase on the most recent S96 approval.

6.1 Public Benefit

Clause 4.6(4)(a)(ii) of the LEP requires that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that 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 proposal is assessed against the objectives for the R1 Residential zone development standard.

Despite the variation from the FSR, the proposal is considered to be in the public interest as it nevertheless satisfies the objectives of the zone and the development standard.

Consistency with the Objectives of the Zone and Standard

Table 1 demonstrates that the proposed variation standard will still result in a development that achieves the objectives height of buildings development standard. The response also considers the appropriateness of the building in the context of the adjoining developments.

***Table 1** – Assessment against zone objectives and objectives of the development standard*

(a)	*to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*	*The bulk and scale of the building maintains that- of the existing dwelling including the street scape set-backs. It is consistent with properties along Commonwealth Pde built under the old Density Control of 1960 which allowed 1 dwelling/100m2.*
(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,*	*The volume and envelope of the proposed S96 modification to no. 5 improves the visibility of No 7, the heritage building from Commonwealth Pde, compared with both the existing and the approved buildings*

(c)	*to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*	*The proposal is 2.6M higher than No. 3 and significantly lower than No. 7, which is 7 storeys high. The sandstone podium, which is characteristic of this streetscape is maintained by reusing the extant material. Front setbacks are transitional*
(d)	*to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*	*The proposal does not change the impact on public land*
(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.*	*Not applicable to residential area*

6.2 Compliance with the development standard is unnecessary and unreasonable
Clause 4.6(3)(a) of the LEP requires the departure from the development standard to be justified by demonstrating:

that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

1. *The objectives of the standard are achieved notwithstanding noncompliance with the standard.*
3. *The underlying object or purpose would be defeated*

The objectives of the standard are otherwise achieved
The objectives of the FSR standard predominantly set out to ensure that proposed developments have a bulk and scale that is compatible with the surrounding character, to ensure development does not cause unreasonable amenity impacts on surrounding properties and to protect public and private views.
These objectives are satisfied by the proposal despite the numerical variation from the FSR standard. The proposed development, will continue to achieve the objectives of the standard for the following reasons:

- *The exceedance of the FSR will have a negligible impact upon the streetscape in terms of visual privacy and solar access provisions for surrounding residential development. View corridors to the side of the development have been maintained. The view lines over the roof are also maintained as the proposed height is no higher than the existing building or the approved building.*
- *The proposal is of a suitable bulk and scale given its context. It is consistent with the streetscape, which includes buildings approved under the old planning ordinance which allowed greater bulk and density than the current LEP.*

The underlying purpose or objective would be thwarted or defeated
The third way relates to compliance with a development standard resulting in the underlying purpose being defeated or thwarted. The underlying purpose of the development standard is to ensure that built form is appropriate and consistent with the surrounding context of the site and desired future streetscape character.
Strict adherence to the development standard would result in a poor development of the site, and would diminish the site's scale in relation to the adjoining properties.
Having regard to the above, in our view it would be unreasonable and unnecessary to enforce compliance with the FSR controls contained within Clause 4.4 of Manly LEP 2013.

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

Clause 4.6(3)(b) of the LEP requires the departure from the development standard to be justified by demonstrating:

> *that there are sufficient environmental planning grounds to justify contravening the development standard.*

The streetscape context of the proposal and the scale of the existing building on the site provide sufficient justification for the variation in FSR standard.

8.0 SUMMARY

Clause 4.4 of the LEP applies a maximum FSR of 0.75:1 to the site. The development proposes a maximum FSR of 1.3 :1. This request under Clause 4.6 of the LEP is submitted to Council in support of this departure.

There are unique constraints which affect the site and a context whereby adjoining buildings already exceed the FSR.

Consistent with the aim of Clause 4.6 to provide an appropriate degree of flexibility in certain circumstances to achieve better outcomes for and from development, a departure from the FSR standard is considered appropriate in these circumstances.

Despite the numerical non-compliance with the FSR, the proposed development is considered to satisfy the objectives of the development standard, as well as those of the R1 Residential zone, and it will provide environmental benefits particular to the site by providing improved residential amenity. On this basis, the Clause 4.6 variation is considered well founded and Council's support for the variation is requested."

(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

Comment: As detailed, a written request is not required in this case. Nevertheless, the applicant's written request has adequately addressed the relevant matters.

(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: For reasons detailed above, the proposal is considered to be consistent with the objectives of the R1 General Residential zone in the MLEP 2013.

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

Comment: Planning Circular PS 08-003 dated 9 May 2008, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General 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 Director-General for the variation to the Floor Space Ratio Development Standard is assumed.

Part 5 Miscellaneous Provisions
The provisions of the Manly LEP 2013 have been referred to as part of the assessment:

5.	Miscellaneous Provisions	Applies	Complies	Comments
5.10	Heritage Conservation	Yes	Yes	The proposed modifications to the approved development are consistent with the objectives and provisions of Clause 5.10 of the Manly LEP 2013.

Part 6 Local Provisions
The provisions of the Manly LEP 2013 have been referred to as part of the assessment:

6.	Local Provisions	Applies	Complies	Comments
6.1	Acid Sulphate Soils	Yes	Yes	The subject site is classified Class 5 Acid Sulfate Soils. The proposed modifications to the approved development are consistent with the objectives and provisions of Clause 6.1 of the Manly LEP 2013.
6.2	Earthworks	Yes	Yes	The proposed modifications to the approved development are consistent with the objectives and provisions of Clause 5.10 of the Manly LEP 2013.
6.4	Stormwater Management	Yes	Yes	The proposed modifications to the approved development are consistent with the objectives and provisions of Clause 6.4 of the Manly LEP 2013.
6.9	Foreshore Scenic Protection Area	Yes	Yes	The proposed modifications to the approved development are consistent with the objectives and provisions of Clause 6.9 of the Manly LEP 2013.

79C(1)(a)(ii) - any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and
There is no applicable Draft Planning Instrument.

79C(1)(a)(iii) - any development control plan, and

Manly Development Control Plan 2013:
The following is an assessment of the proposal's compliance with the standards of the Development Control Plan. Where a variation is proposed to the standards, an assessment is included in the Planning Comments.

Part 3 General Principles of Development

Issues	Consistent with controls	Inconsistent with controls
Streetscape	✓	
Heritage – In Vicinity	✓	
Landscaping Design	NA	
Landscape/Tree Preservation	NA	
Sunlight Access and Overshadowing	✓	
Privacy and Security	✓	
Maintenance of Views	✓	

Comment:
The Landscape Design and Landscape/Tree Preservation objectives under Part 3 of the Manly DCP 2013 are not relevant in this case, as no modifications to the approved landscaping are proposed.

3.1 Streetscapes and Townscapes
Streetscape
Objective 1) To minimise any negative visual impact of walls, fences and carparking on the street frontage.
The proposed modifications do not introduce any additional walls, fences or car parking on the street frontage.

Objective 2) To ensure development generally viewed from the street complements the identified streetscape.
The proposed modifications generally maintain the approved envelope of the approved development, with the exception of reduced front setbacks. However, these modified setbacks are consistent with the prevailing building line along Commonwealth Parade.

Objective 3) To encourage soft landscape alternatives when front fences and walls may not be appropriate.
The proposed treatment of the street frontage is acceptable in the context.

3.2 Heritage Considerations
Objective 1) To retain and conserve environmental heritage and cultural significance of Manly including:
- *significant fabric, setting, relics and view associated with heritage items and conservation areas;*
- *the foreshore, including its setting and associated views; and*
- *potential archaeological sites, places of Aboriginal significance and places of natural significance.*

The proposed development does not unreasonably alter any significant heritage fabric, relics, views or the foreshore. The subject site does not contain any potential archaeological sites, places of Aboriginal significance or places of natural significance.

Objective 2) To ensure any modification to heritage items, potential heritage items or buildings within conservation areas is of an appropriate design that does not adversely impact on the significance of the item or the locality.
The proposed modifications to the approved development does not alter any heritage items, potential heritage items of buildings within a conservation area.

Objective 3) To ensure that development in the vicinity of heritage items, potential heritage item and/ or conservation areas, is of an appropriate form and design so as not to detract from the significance of those items.
The proposed works are of a form and design so as to appropriately redevelop the site, without detracting from the significance of the nearby heritage listed items.

Objective 4) To provide infrastructure that is visually compatible with surrounding character and locality/visual context with particular regard to heritage buildings/areas and cultural icons.

The proposed development does not involve infrastructure.

Objective 5) To integrate heritage management and conservation into the planning development process including incentives for good heritage management, adaptive reuse, sustainability and innovative approaches to heritage conservation.

The heritage significance of the site has been considered throughout the planning process for this application. The proposed modifications adequately conserve the heritage value of the adjacent heritage items and surrounds.

3.4.1 Sunlight Access and Overshadowing

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

The proposed modifications to the approved development retain equitable access to light and sunshine in that the side setbacks and overall building height remain unchanged.

The reduced front setbacks would result in minimal additional overshadowing, that would fall predominantly to the street. The reduced rear setback to the third floor is also minor in nature and would result in insignificant additional overshadowing, falling predominantly on the subject site.

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.*

The minor reductions in front and rear setbacks do not result in a significant or unreasonable increase to overshadowing to private open spaces and windows to living rooms/habitable rooms on the subject site or adjacent sites, beyond that of the approved development.

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.*

The proposed modifications retain adequate building modulation and the approved southern side setback.

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; and*
- *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

The proposed modifications minimise the loss of privacy to adjacent and nearby development with the inclusion of privacy screening to rear balconies. In this way, the proposed modifications are appropriately designed for privacy and mitigate direct viewing between properties.

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

The proposed modifications provide adequate privacy without compromising access to light and air. The outlook and views from habitable rooms and private open space is balanced in that overlooking is minimised, but views from the subject site are still available.

Objective 3) To encourage awareness of neighbourhood security.

The proposed modifications retain the front-facing balconies, which encourages awareness of neighbourhood security through passive surveillance.

3.4.3 Maintenance of Views

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

The proposed modifications do not unreasonably impact upon views to, from or across the subject site or adjacent sites.

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).

The proposed modifications do not unreasonably impact upon views from adjacent and nearby development, and to and from public spaces, including to icons, landmarks and buildings.

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.

The proposed modifications do not result in unreasonable view creep.

Part 4 - Development Controls

Site Area: 460m²	**Permitted/ Required**	**DA Approved**	**Proposed**	**Complies Yes/No**
Residential Density – Area D2	150m² of site area per dwelling	115m² of site area per dwelling	153.3m² of site area per dwelling	Yes
Setback Front	6.0m or streetscape	0m to basement and ground 3.4m to first floor 4.7m to second floor 7m to third floor	0m to basement and ground 2.12m to first floor 4.7m to second floor 7m to third floor	No. See comment below.
Setback Rear	8.0m	4.7m to basement 6.5m to ground 0m to first floor stairs and landscaping 7m to second floor 12m to third floor	4.7m to basement 6.5m to ground 0m to first floor stairs and landscaping 7m to second floor 10.8m to third floor	Yes
Open space – total	Min. 50% of total site area (230m²)	66.8% (307.6m²)	No change proposed	Yes
Open space – landscaped	Min. 30% of total open	13% (40m²)	No change proposed	Yes – Approved

Site Area: 460m²	**Permitted/ Required**	**DA Approved**	**Proposed**	**Complies Yes/No**
	space (92.1m²)			
Open space – above ground	Max 40% of total open space (122m²)	60.6% (186.6m²)	55% (169.6m²)	Yes – Improvement on approved
Private Open Space	12m² per dwelling	20-54m² per dwelling	20-71m² per dwelling	Yes
Car Parking – Residents	1 per dwelling, plus 0.2 per 2-bedroom dwelling, plus 0.5 per 3-bedroom dwelling: 5 spaces	9 spaces (5 required for four previous units)	7 spaces	Yes
- Visitors	0.25 spaces per dwelling: 1 space	1 space	1 space	Yes
Excavation	Generally 1m Dilapidation or Geotechnical report	7.5m for the purpose of a basement car park	8.1m for the purpose of a basement car park	Yes

Comment:

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

Clause 4.1.4.1 of the MDCP 2013 provides that street front setbacks must relate to prevailing building line in the immediate vicinity, or be a minimum of 6m. The approved development has front setbacks of 0m to the basement and ground, 3.4m to the first floor, 4.7m to the second floor, and 7m to the third floor. The proposed modifications alter the front setbacks at the first and second floors to 2.12m and 4.7m respectively.

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.

The proposed modified front setbacks are minor in nature. Further, the proposed modified front consistent with and complementary to existing developments within the immediate vicinity, thereby maintaining the desired spatial proportions of the street, the street edge and the landscape 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.*

The sunlight access, privacy, maintenance of view and streetscape character impacts resulting from the proposed modifications are acceptable for the reasons detailed in the section of this report relating to Part 3 of the Manly DCP 2013 – General Principles of Development. The proposed modifications do not impact upon traffic conditions.

Objective 3) To promote flexibility in the siting of buildings.
The proposed development (with modifications included) is adequately sited in order to provide an appropriate level of amenity to the subject site, as well as adjacent 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.*

The proposed modifications to the approved development do not impact upon planting, deep soil zones, vegetation, or the landscaped context of the site. The subject site does not contain urban bushland.

Objective 5) To assist in appropriate bush fire asset protection zones.
The subject site is not within an area of bushfire prone land.

Part 5 - Special Character Areas and Sites

Special Character Areas and Sites	Applicable	Not Applicable
Conservation Area		✓
Foreshore Scenic Protection Area	✓	
Threatened Species and Critical Habitat		✓
Flood Control Lots		✓
Riparian Land and Watercourses		✓
Road Widening		✓

Comment:
The proposed modifications to the approved development are not considered to unreasonably impact upon the visual aesthetic amenity of the Foreshore Scenic Protection Area.

79C(1)(a)(iiia)- any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and
No planning agreement has been entered into in relation to the proposed modifications to the approved development.

79C(1)(a) (iv) - the regulations
The relevant prescribed regulations contained within the *Environmental Planning and Assessment Regulations 2000* are addressed through the imposition of suitable conditions.

79C(1)(a)(v) - any coastal zone management plan (within the meaning of the Coastal Protection Act 1979)
There is no Coastal Zone Management Plan applicable for the Manly area.

79C(1) (b) - the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality
The proposed modifications to the approved development will not result in any unreasonable impact on the natural and built environments or any unreasonable social and economic impacts in the locality.

79C(1) (c) - the suitability of the site for the development,
The proposed modifications to the approved development are suitable for the site.

79C(1) (d) - any submissions made in accordance with this Act or the regulations
The application was notified to nearby and adjoining property owners in accordance with Council's Development Control Plan 2013 Section 2.3 with one submission received from the following objector raising the following concerns:

Submission and Address	Main Issues raised in the submission
1. B. Foley 3/1 Commonwealth Parade, Manly	• Development has not "substantially" commenced • Minimal gap between Nos. 3 and 5 Commonwealth Parade no longer exists on plans.

Comment:
Substantial Commencement
As per Clause 95 of the *Environmental Planning and Assessment Act 1979*, development consent lapses five years after the date of determination, unless building, engineering or construction activity relating to the work is physically commenced on the site prior to the consent lapsing. On 11 September 2009, prior to the consent lapse date, geotechnical bore holes were drilled, representing physical commencement of works. As such, the consent has been activated.

Inconsistencies in Plans
The plans submitted with this application demonstrate consistency with previously approved plans in relation to the northern side boundary setbacks.

79C(1) (e) - the public interest.
The proposed modifications to the approved development are in the public interest.

S94 Contribution towards provision or improvement of amenities or services
This part of the Act relates to the collection of monetary contributions from applicants for use in developing key local infrastructure. The Act reads as follows:

'(1) If a consent authority is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the consent authority may grant the development consent subject to a condition requiring:
(a) the dedication of land free of cost, or
(b) the payment of a monetary contribution,
or both.
(2) A condition referred to in subsection (1) may be imposed only to require a reasonable dedication or contribution for the provision, extension or augmentation of the public amenities and public services concerned.'

Comments:
The proposed modifications to the approved development result in a reduction of the number of units contained within the residential flat building from four to three. Further, four dwellings currently exist on site, so no additional new dwellings are proposed. Accordingly, no contribution is applicable to the proposed development.

Section 96(2) of the Environmental Planning and Assessment Act 1979

(2) **Other modifications**
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and

(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and

(c) it has notified the application in accordance with:
(i) the regulations, if the regulations so require, or
(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

Subsections (1) and (1A) do not apply to such a modification.

(3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application.

(4) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.

(5) **Threatened species**
Development consent of the kind referred to in section 79B (3), or in respect of which a biobanking statement has been issued under Part 7A of the Threatened Species Conservation Act 1995, is not to be modified unless:

(a) in the case of development referred to in section 79B (3)—the requirements of section 79B (3)–(7) have been complied with in relation to the proposed modification as if the application for the proposed modification were an application for development consent, or

(b) in the case of development in respect of which a biobanking statement has been issued under Part 7A of the Threatened Species Conservation Act 1995—the applicant has made an application for modification of the biobanking statement in relation to the proposal and a new biobanking statement has been issued or the consent authority is satisfied that the modification will have no impact on biodiversity values (within the meaning of that Act).

With regard to the above it is considered that the proposed modifications to the original consent, will result in substantially the same development for which consent was originally granted. The modifications requested were notified in accordance with Council's Manly DCP with one submission received. All matters relating to the proposed modifications in terms of impact on have been considered. On balance, the proposed modifications are considered to be satisfactory for approval, subject to conditions.

CONCLUSION:
The application has been assessed having regard to Section 79C and Section 96 of the Environmental Planning and Assessment Act 1979, the Manly Local Environmental Plan 2013 and the Manly Development Control Plan 2013 and is considered to be satisfactory for **Approval**, subject to conditions.

RECOMMENDATION
That pursuant to Section 96 (2) of the Environmental Planning and Assessment Act 1979, the proposed modification to Development Consent No. 436/2008 for a Residential Flat Building – at 5 Commonwealth Parade, Manly be **Approved** subject to:

The following Condition No. ANS01 (3MS01) is to be amended as per Section 96(2) Application – Part 4:

ANS01 (3MS01)
Works in connection with this Section 96 modification are not to be commenced/carried out until a new Construction Certificate is issued.
Reason: The Environmental Planning and Assessment Act 1979 requires a new updated Construction Certificate to cover any or all approved Section 96 modifications involving changes in the design of the development.

The following Condition No. ANS02 is to be amended as per Section 96(2) Application – Part 4:

ANS02
An Erosion and Sediment Management Plan which provides adequate measures for erosion and sediment control, must be submitted with the Construction Certificate and approved by the Council/Accredited Certifier. The Erosion and Sediment Management Plan shall comply with the requirements for Erosion and Sediment Management plans contained with Clause 2.1.11 of the Manly Development Control Plan, 2013 and Manly Council's Guidelines for Sediment and Erosion Controls on Building Sites, 2005.
Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

The following Condition No. ANS03 (2PT01) is to be amended as per Section 96(2) Application – Part 4:

ANS03 (2PT01)
The driveway/access ramp grades, access and car parking facilities must comply with the Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking.
Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

The following Condition No. ANS04 (2PT02) is to be amended as per Section 96(2) Application – Part 4:

ANS04 (2PT02)
All driveways, car parking areas and pedestrian paths are to be suitably surfaced. Details of the treatment to these areas are to be submitted to the Council/Accredited Certifier prior to issue of the Construction Certificate.
Reason: To provide suitable stormwater disposal and to prevent soil erosion and runoff.

The following Condition No. ANS05 (2PT03) is to be amended as per Section 96(2) Application – Part 4:

ANS05 (2PT03)
The dimensions of car parking bays and aisle widths in the car park are to comply with Australian/New Zealand Standard for Off-Street Parking AS/NZS 2890.1-2004.
Reason: To ensure compliance with this consent and Australian Standards relating to manoeuvring, access and parking of vehicles.

The following Condition No. ANS06 (2PT05) is to be amended as per Section 96(2) Application – Part 4:

ANS06 (2PT05)
Vehicular manoeuvring paths must be provided to demonstrate all vehicles can enter or depart the site in a forward direction without encroaching on required car parking spaces. The drawings must be compliant with Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking. Drawings must be submitted with the Construction Certificate application.
Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

The following Condition No. ANS07 (3PT01) is to be amended as per Section 96(2) Application – Part 4:

ANS07 (3PT01)
In accordance with the Roads Act 1993, written consent from Council must be obtained and must be in hand prior to any track equipped plant being taken in or onto any roadway, kerb & gutter, footway, nature strip, or other property under Council's control.
Reason: To ensure appropriate protection of public infrastructure and facilitate access for public and vehicular traffic.

The following Condition No. ANS08 (3PT02) is to be amended as per Section 96(2) Application – Part 4:

ANS08 (3PT02)
Applications for a construction zone on a local road require 28 days notice to Council indicating location and length. All construction zones require the approval of the Manly Traffic Committee.
Reason: To ensure Council and the Traffic Committee have sufficient time and information to assess the traffic and access implications of a proposed construction zone and to develop appropriate responses to those implications.

The following Condition No. ANS09 (6PT01) is to be amended as per Section 96(2) Application – Part 4:

ANS09 (6PT01)
The visitor parking is to be accessible at all times, and a sign post erected at the vehicular entry point(s) of the development indicating the location of the visitor parking.
Reason: To ensure visitors are not forced to park on public streets when visitor parking has been provided and is available within the development.

The following Condition No. ANS10 (6PT02) is to be amended as per Section 96(2) Application – Part 4:

ANS10 (6PT02)
Adequate vehicle parking as required by the Manly Development Control Plan 2013 is to be available at all times for motor vehicles associated with the use of the land.
Reason: To ensure users of the land are not forced to park on public streets.

The following Condition No. ANS11 (5LD01) is to be amended as per Section 96(2) Application – Part 4:

ANS11 (5LD01)
A qualified Landscape Consultant is to submit a Certificate of Practical Completion to the Principal Certifying Authority prior to the issue of the Occupation Certificate, stating the work has been carried out in accordance with the approved Landscape Drawing and a maintenance program has been established.
Reason: This is to ensure the landscaping is planted in accordance with the drawing and maintained appropriately

The following Condition No. ANS12 (5LD02) is to be amended as per Section 96(2) Application – Part 4:

ANS12 (5LD02)
Evidence of an agreement for the maintenance of all plants for a period of twelve (12) months from the date of practical completion of the building is to be provided to the Principal Certifying Authority prior to issue of the final Occupation Certificate.
Reason: To ensure landscaping will be appropriately maintained.

The following Condition No. ANS13 (6LP03) is to be amended as per Section 96(2) Application – Part 4:

ANS13 (6LP03)
Landscaping is to be maintained in accordance with the approved Landscaping Drawing.
Reason: This is to ensure that landscaping is maintained appropriately.

The following Condition No. ANS14 (6LP04) is to be amended as per Section 96(2) Application – Part 4:

ANS14 (6LP04)
Leighton Green Cypress Cupressocyparis leylandii or any of its cultivars, must not be planted on the site for the life of the development. In the event of any inconsistency between this condition and the development application documents, this condition will prevail to the extent of the inconsistency.
Reason: To reduce the potential for adverse amenity effects such as overshadowing, loss of views, and loss of plant diversity.

GENERAL CONDITIONS

The following Condition No. DA1 is to be amended as per Section 96(2) Application – Part 4:

DA1
The development, except where modified by the conditions of this consent, is to be carried out in accordance with the following plans and reference documentation;

This approval relates to Drawings Nos. 110.09 / S.96 / 02H, 03H, 08H, 10H, 11H and 12H; dated 11 November 2008 and received 27 November 2008.

NOTE: These drawings supersede the basement and ground floor plans approved under DA211/04, as amended. Apart from these works to the basement and ground floor, the approved drawings under DA211/04 as amended remain the approved plans.

Except as amended by:

Drawings affixed with Council's 'Development Consent' stamp relating to this Section 96(1A) Application – Part 3:

Plan No. / Title	Issue/ Revision & Date	Date Received by Council
Site Plan	Undated	17 June 2016
110.09 / S96-03 Basement & Ground Floor Plan	Issue J 10 June 2016	17 June 2016
110.09 / S96-04 Level 1 & Level 2 Plan	Issue J 10 June 2016	17 June 2016
110.09 / S96-05 Level 3 & Roof Plan	Issue J 10 June 2016	17 June 2016
110.09 / S96-03 Sections A, B, C, D, E & F	Issue J 10 June 2016	17 June 2016
110.09 / CD-105 Elevations	Issue A Undated	3 November 2016
110.09 / CD-107 Sections G & H	Issue A Undated	3 November 2016

Reference Documentation affixed with Council's stamp relating to this Section 96(1A) Application – Part 3:

- Statement of Modifications prepared by Baxter & Jacobson Architects dated 10 June 2016 and received by Council on 17 July 2016

Except as amended by:

Drawings affixed with Council's 'Development Consent' stamp relating to this Section 96() Application – Part 4:

Plan No. / Title	Issue/ Revision & Date	Prepared By
1.20 Site Analysis Plan	**Rev. A 17 October 2017**	**Baxter & Jacobson**
2.20 Basement Floor Plan	**Rev. A 17 October 2017**	**Baxter & Jacobson**
2.21 Ground Floor Plan – Unit 01	**Rev. A 17 October 2017**	**Baxter & Jacobson**
2.22 Level 01 Floor Plan – Unit 02	**Rev. A 17 October 2017**	**Baxter & Jacobson**
2.23 Level 02 Floor Plan – Unit 03	**Rev. A 17 October 2017**	**Baxter & Jacobson**
2.24 Level 03 Floor Plan – Unit 03	**Rev. A 17 October 2017**	**Baxter & Jacobson**
2.25 Roof Plan	**Rev. A 17 October 2017**	**Baxter & Jacobson**
3.00 Elevations	**Rev. A 17 October 2017**	**Baxter & Jacobson**
3.10 Elevations	**Rev. A 17 October 2017**	**Baxter & Jacobson**
3.20 Elevations	**Rev. A 17 October 2017**	**Baxter & Jacobson**
3.30 Sections A & B	**Rev. A 17 October 2017**	**Baxter & Jacobson**
3.40 Section C	**Rev. A 17 October 2017**	**Baxter & Jacobson**
3.50 Section D	**Rev. A 17 October 2017**	**Baxter & Jacobson**
3.60 Section E	**Rev. A 17 October 2017**	**Baxter & Jacobson**
4.00 Landscape Plan	**Rev. A 17 October 2017**	**Baxter & Jacobson**
5.10 Cross Section – Floor Level Analysis	**Rev. A 17 October 2017**	**Baxter & Jacobson**

Reference Documentation relating to this Section 96(2) Application – Part 4:

- **BASIX Certificate No. 315056M_03 prepared by AGA Consultants dated 17 October 2017**
- **NatHERS Certificate No. 0002042140 prepared by AGA Consultants Pty Ltd dated 17 October 2017**
- **NatHERS Certificate No. 0002042067 prepared by AGA Consultants Pty Ltd dated 17 October 2017**

- **NatHERS Certificate No. 0002042083 prepared by AGA Consultants Pty Ltd dated 17 October 2017**
- **NatHERS Certificate No. 0002042091 prepared by AGA Consultants Pty Ltd dated 17 October 2017**
- **NatHERS Thermal Performance Specifications prepared by Robert Mallindine dated 17 October 2017**

In the event of any inconsistency between the approved plans and supplementary documentation, the plans will prevail.
Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council.

DA16
Pursuant to Section 97 of the Local Government Act, 1993, Council requires, **prior to issue of the Construction Certificate, or commencement of any excavation and demolition works**, payment of a Trust Fund Deposit of $5000. The Deposit is required as security of compliance with Conditions of Consent, and as security against damage to Council property during works on the site.

DA18
Details of the builder's name and licence number contracted to undertake the works shall be provided to Council/Accredited Certifier **prior to issue of the Construction Certificate**.

> **Note**: Should Council property adjoining the site be defective eg, cracked footpath, broken kerb etc., this shall be reported in writing to Council, **at least 7 days prior to the commencement of any work on site**.

DA19
Insurance must be undertaken with the contracted builder in accordance with the Home Building Act, 1997. Evidence of Insurance together with the contracted builders name and licence number must be submitted to Council /Accredited Certifier **prior to issue of the Construction Certificate**.

DA21
Toilet facilities are to be provided at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 person or part of 20 persons employed at the site, by effecting either a permanent or temporary connection to the Sydney Water's sewerage system or by approved closets.

DA22
Retaining walls being constructed in conjunction with excavations with such work being in accordance with structural engineer's details. Certification of compliance with the structural detail during construction shall be submitted to the Principal Certifying Authority.

DA23
No person shall use or occupy the building or alteration which is the subject of this approval without the **prior issue of an Occupation Certificate**.

DA24
A sign must be erected on the subject site in a prominent position stating that unauthorised entry is prohibited and giving details of the name of the builder or the person responsible for the site and 24 hour contact details. The sign is to have dimensions of approximately 500mm x 400mm.

> Note: The sign is not required if the building on the site is to remain occupied during the course of the building works.

DA26
All construction works shall be strictly in accordance with the Reduced Levels (RLs) as shown on the approved plans with certification being submitted to the Principal Certifying Authority during construction from a registered surveyor certifying ground and finished ridge levels.

DA31
Consent given to build in close proximity to the allotment boundary is in no way to be construed as permission to build on or encroach over the allotment boundary. Your attention is directed to the provisions of the Dividing Fences Act which gives certain rights to adjoining owners, including use of the common boundary. In the absence of the structure standing well clear of the common boundary, it is recommended that you make yourself aware of your legal position which may involve a survey to identify the allotment boundary.

DA39
Four (4) certified copies of the Structural Engineer's details in respect of all reinforced concrete, structural steel support construction and any proposed retaining walls shall be submitted to the Council/Accredited Certifier **prior to the issue of the Construction Certificate**.

DA40
Where any excavation extends below the level of the base of the footing of a building on an adjoining allotment of land, the person causing the excavation shall support the neighbouring building in accordance with the requirements of the Building Code of Australia.

DA44
The floor surfaces of bathrooms, shower rooms, laundries and WC compartments are to be of an approved impervious material properly graded and drained and waterproofed in accordance with AS3740. Certification is to be provided to the Principal Certifying Authority from a licenced applicator prior to the fixing of any wall or floor tiles.

DA47
A suitable sub-surface drainage system being provided adjacent to all excavated areas and such drains being connected to an approved disposal system.

DA48
The implementation of adequate care during demolition/ excavation/ building/ construction to ensure that no damage is caused to any adjoining properties.

DA58
An adequate security fence, is to be erected around the perimeter of the site prior to commencement of any excavation or construction works, and this fence is to be maintained in a state of good repair and condition until completion of the building project.

DA59
Building work shall not progress beyond first floor level until such time as Registered Surveyor's details of levels are submitted to the Principal Certifying Authority. These levels shall confirm that the works are in accordance with the levels shown and approved in the development approval.

DA60
On completion of the building structure a Registered Surveyor's report is to be submitted to the Principal Certifying Authority confirming that the building has been completed in accordance with the levels as shown on the approved plan.

DA109
All demolition is to be carried out in accordance with AS2601-2001.

DA111
Asbestos cement sheeting must be removed in accordance with the requirements of the WorkCover Authority.

DA121
All building work must be carried out in accordance with the provisions of the Building Code of Australia.

DA261
A sediment/erosion control plan for the site shall be submitted for approval to the Council/Accredited Certifier **prior to the issue of the Construction Certificate**. Implementation of the scheme shall be completed prior to commencement of any works on the site and maintained until completion of the development.

DA269
A Construction Certificate Application is required to be submitted to and issued by the Council/Accredited Certifier **prior to any building works being carried out on site**.

DA270 Should you appoint Council as the Principal Certifying Authority (PCA) to undertake inspections during the course of construction then the following inspection/certification are required:-

Silt control fences
Footing inspection –
Reinforced concrete slab x 5
Framework inspection
Wet area moisture barrier
Drainage inspection – pits & tanks
Landscaping inspection
Retaining wall steel
Final inspection

The cost of these inspections by Council is $2860. (being $220.00 per inspection inclusive of GST). **Payment of the above amount is required prior to the first inspection. Inspection appointments can be made by contacting the Environmental Services Division on 9976 1573 or 9976 1587.**

At least 24 hours notice should be given for a request for an inspection and submission of the relevant inspection card. Any additional inspection required as a result of incomplete works will incur a fee of $100.00.

DA271
An Occupation Certificate is to be issued by the Principal Certifying Authority **prior to occupation of the development**.

DA279
All excavated material should be removed from the site in an approved manner and be disposed of lawfully to a tip or other authorised disposal area.

DA283
De-watering from the excavation or construction site must comply with the Protection of the Environment Operations Act 1997 and the following:

a) Ground water or other water to be pumped from the site into council's stormwater system must by sampled and analysed by a NATA certified laboratory or Manly council for compliance with ANZECC Water Quality Guidelines

b) If tested by NATA certified laboratory, the certificate of analysis issued by the laboratory must be forwarded to Manly Council as the appropriate regulatory authority under the Protection of the Environment Operations Act 1997, prior to the commencement of de-watering activities.

c) Council will grant approval to commence site de-watering to the stormwater based on the water quality results received.

d) It is the responsibility of the applicant to ensure that during de-watering activities, the capacity of the stormwater system is not exceeded, that there are no issues associated with erosion or scouring due to the volume of water pumped.

e) Turbidity readings must not at any time exceed the ANZECC recommended 50ppm (parts per million) for receiving waters.

f) Also the developer must contact the Department of Infrastructure, Planning and Natural Resources and comply with any of their requirements.

DA285
Roof and framing including provision for tie downs, bracing and fixings are to be designed by a practising Structural Engineer. The Engineer is to specify appropriate wind category relating to the site terrain, house design and height of the structure, with details being submitted to the Principal Certifying Authority **prior to the commencement of framework**.

DA289
Building or construction work must be confined to the hours between 7.00am to 6.00pm, Monday to Friday and 7.00am to 1.00pm, Saturday, with a total exclusion of such work on Public Holidays and Sundays. Non-offensive works where power operated plant is not used and including setting out, surveying, plumbing, electrical installation, tiling, internal timber or fibrous plaster fixing, glazing, cleaning down brickwork, painting, building or site cleaning by hand shovel and site landscaping, is permitted between the hours of 1.00pm to 4.00pm Saturdays.

Note: That the Protection of the Environment Operations Act 1997 may preclude the operation of some equipment on site during these permitted working hours.

DA290
The operations of mechanical services are not to give rise to an offensive noise within the meaning of the Protection of the Environment Operations Act 1997.

DA319
Details of the method of termite protection which will provide whole of building protection, inclusive of structural and non-structural elements shall be submitted to the Council/Accredited Certifier **prior to issue of the Construction Certificate**. Attention is drawn to the provisions of Australian Standard 3660.1 "Protection of Buildings from Subterranean Termites - New Buildings" and to Council's Code for the "Protection of Buildings Against Termite Attack".

DA320
Prior to issue of the Occupation Certificate, a durable termite protection notice shall be permanently fixed to the building in a prominent location detailing the form of termite protection which has been used in accordance with Council's Code for the "Protection of Buildings Against Termite Attack".

DA332
The capacity and effectiveness of erosion and sediment control devices must be maintained to Council's satisfaction at all times.

DA333
A copy of the Soil and Water Management Plan must be kept on-site at all times and made available to Council officers on request.

DA334
Stockpiles are not permitted to be stored on Council property (including nature strip) unless prior approval has been granted.

DA335
Stockpiles of topsoil, sand, aggregate, spoil or other material shall be stored clear of any drainage line or easement, natural watercourse, kerb or road surface.

DA336
Drains, gutters, roadways and access ways shall be maintained free of sediment and to the satisfaction of Council. Where required, gutters and roadways shall be swept regularly to maintain them free from sediment.

DA337
Building operations such as brickcutting, washing tools or paint brushes, and mixing mortar not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.

DA338
All disturbed areas shall be stabilised against erosion to Council's satisfaction within 14 days of completion, and prior to removal of sediment controls.

DA339
Stormwater from roof areas shall be linked via a temporary downpipe to a Council approved stormwater disposal system immediately after completion of the roof area. Inspection of the building frame will not be made until this is completed to Council's satisfaction.

DA340
The applicant and/or builder must prior to the commencement of work, install at the periphery of the site, measures to control sedimentation and the possible erosion of the land.

The measures must include:-

(i) siltation fencing;
(ii) protection of the public stormwater system; and
(iii) site entry construction to prevent vehicles that enter and leave the site from tracking loose material onto the adjoining public place.

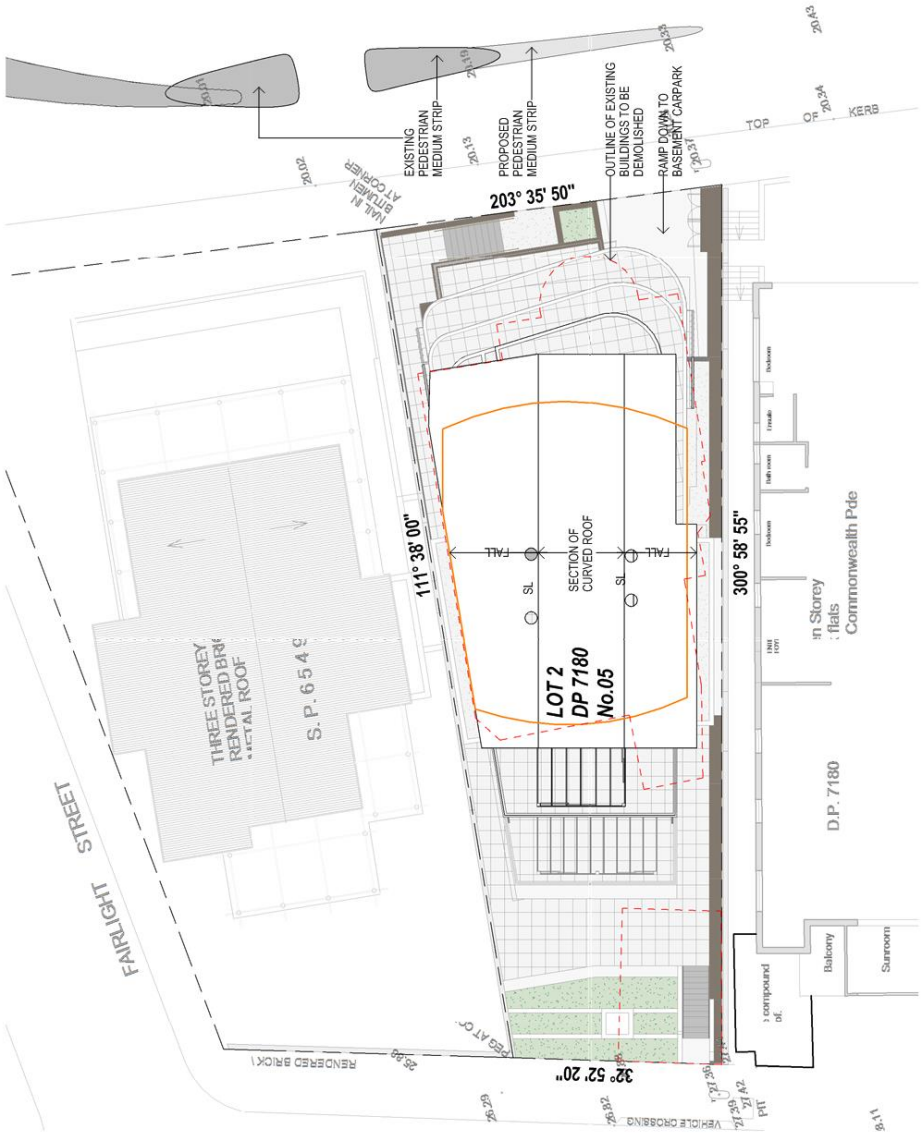
DA357
Four (4) copies of Architectural Drawings consistent with the development consent and associated specifications are to be submitted to Council/Accredited Certifier **prior to the issue of the Construction Certificate.**

DA274
Payment of contributions in accordance with Section 94 of the Environmental Planning and Assessment Act, 1979, may be required for this development. If required the amount will be in accordance with Councils Section 94 Policy applicable at the time of payment prior to the issue of the Construction Certificate.

The following Condition No. DA323 (3MS01) is to be added as per Section 96(1A) Application – Part 3 – determined on 09 November 2016:

DA323
DELETED

17/10/2017 11:31:19 AM



ROOF & SITE PLAN
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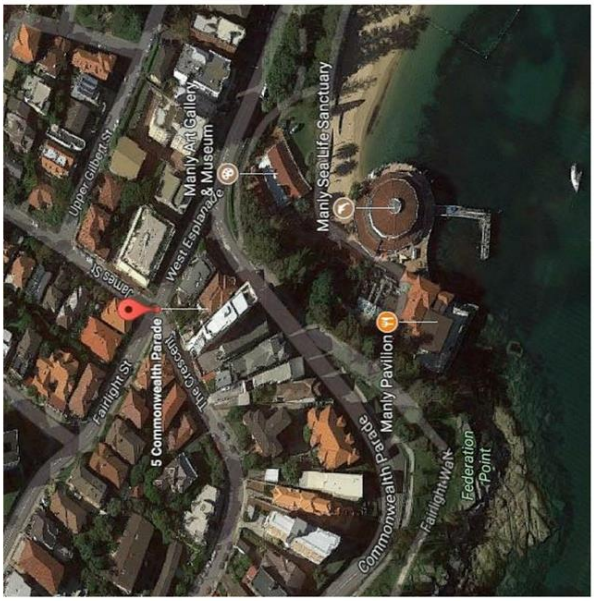

LOCATION PLAN
NOT TO SCALE

North Point

BAXTER & JACOBSON ARCHITECTS
SYDNEY LEVEL 2, 37-39 THE CORSO MANLY, NSW 2095 AUSTRALIA
BYRON BAY 8 OCEANSIDE PLACE SUFFOLK PARK, NSW 2481 AUSTRALIA
PHONE +612 9977 7648
MOBILE 0408 770 294
EMAIL mark@bja.net.au
WEB www.bja.net.au

Project	5 Commonwealth Parade
Client	CES KOUSTOS
Address	5 Commonwealth Parade
Design Stage	SECTION 96
Title	LOCATION & SITE PLAN
Job No	110-09
Drawn	GB
Checked	MB
Scale	1 : 200
Drawing no.	1.00
Issue	A

Issue	Date	
A	17/10/2017	SECTION 96 APPLICATION Amendment

General Notes:

*Any discrepancies to be brought to Architects attention
*Do not scale drawings - Use only figured dimensions
*Only scale under direction from architect
*Check all dimensions on site prior to commencing
*This drawing is to be read in conjunction with all other drawings
*This drawing remains the property of the Architect
*Copyright reserved by the Architect - Do not reproduce
*Consult with Architect if any discrepancies exist
*Report all hint Licencing is provided
*Do not scale drawings - Use only figured dimensions
*Electronic data supplied should be accepted for arrises before use
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*Report all hint Licencing is provided
*Do not scale drawings - Use only figured dimensions
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*Any reproduction of this drawing without the express written permission of the Architect is a breach of copyright
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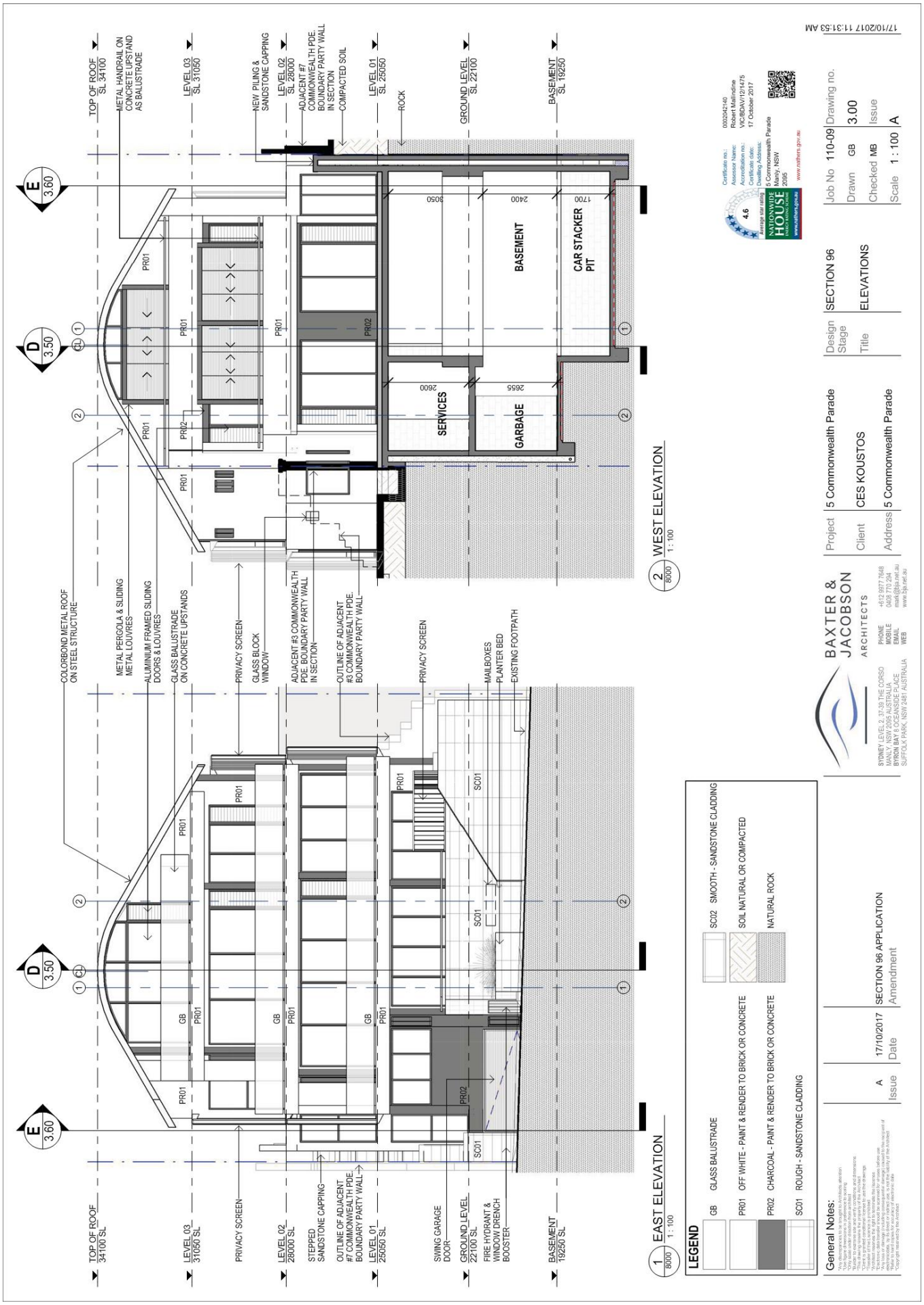
1 EAST ELEVATION
1 : 100
2 WEST ELEVATION
1 : 100
TOP OF ROOF SL 34100
LEVEL 03 SL 31050
LEVEL 02 SL 28000
LEVEL 01 SL 25050
GROUND LEVEL SL 22100
BASEMENT SL 19250
COLORBOND METAL ROOF ON STEEL STRUCTURE
METAL PERGOLA & SLIDING METAL LOUVRES
ALUMINIUM FRAMED SLIDING DOORS & LOUVRES
GLASS BALUSTRADE ON CONCRETE UPSTANDS
PRIVACY SCREEN
GLASS BLOCK WINDOW
ADJACENT #3 COMMONWEALTH PDE. BOUNDARY PARTY WALL IN SECTION
OUTLINE OF ADJACENT #3 COMMONWEALTH PDE. BOUNDARY PARTY WALL
MAILBOXES
PLANTER BED
EXISTING FOOTPATH
STEPPED SANDSTONE CAPPING
OUTLINE OF ADJACENT #7 COMMONWEALTH PDE. BOUNDARY PARTY WALL
SWING GARAGE DOOR
FIRE HYDRANT & WINDOW DRENCH BOOSTER
METAL HANDRAIL ON CONCRETE UPSTAND AS BALUSTRADE
NEW PILING & SANDSTONE CAPPING
ADJACENT #7 COMMONWEALTH PDE BOUNDARY PARTY WALL IN SECTION
COMPACTED SOIL
ROCK
BASEMENT
CAR STACKER PIT
SERVICES
GARBAGE
LEGEND
GB GLASS BALUSTRADE
PR01 OFF WHITE - PAINT & RENDER TO BRICK OR CONCRETE
PR02 CHARCOAL - PAINT & RENDER TO BRICK OR CONCRETE
SC01 ROUGH - SANDSTONE CLADDING
SC02 SMOOTH - SANDSTONE CLADDING
SOIL NATURAL OR COMPACTED
NATURAL ROCK
General Notes:
Issue A 17/10/2017 SECTION 96 APPLICATION Amendment
BAXTER & JACOBSON ARCHITECTS
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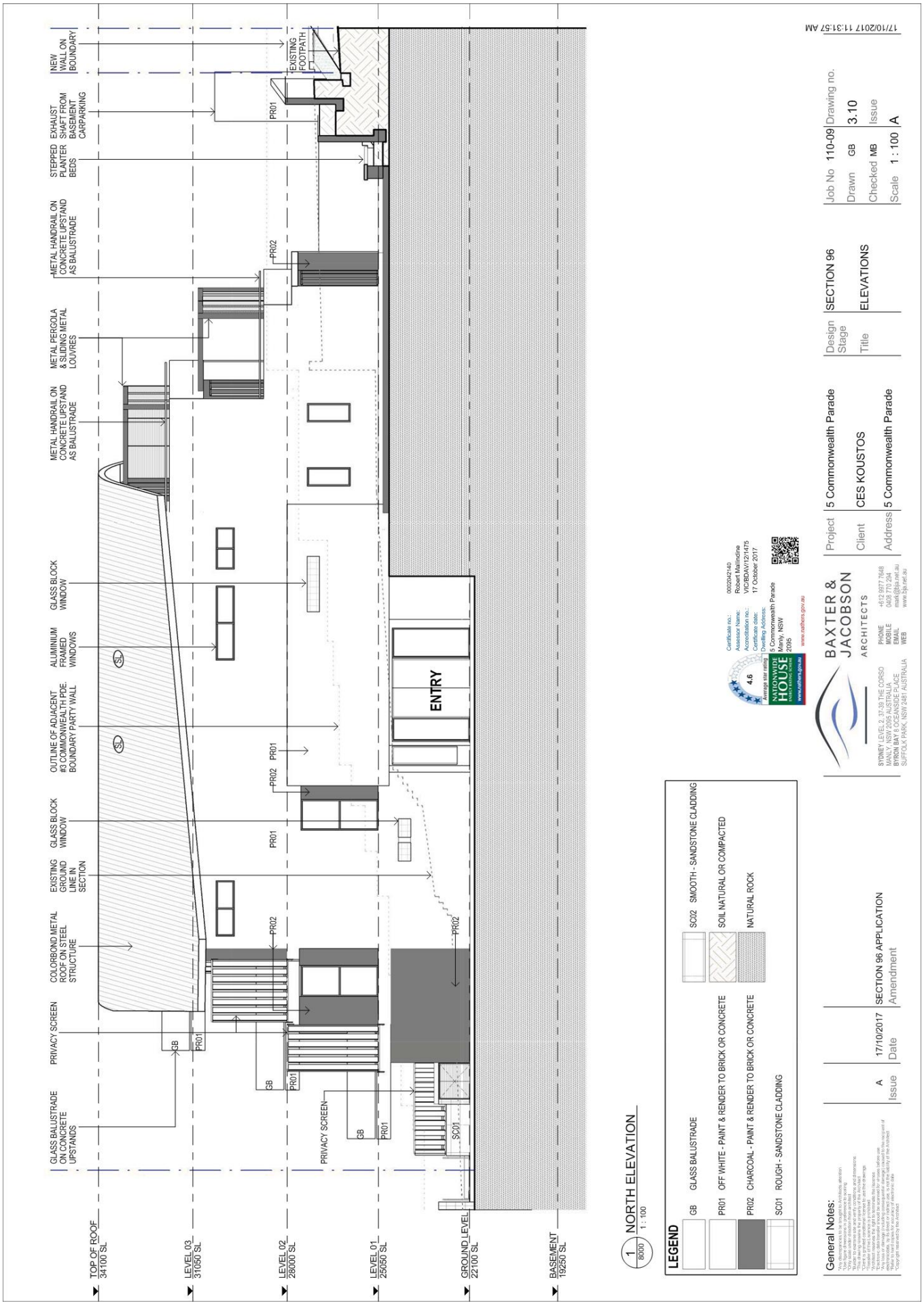
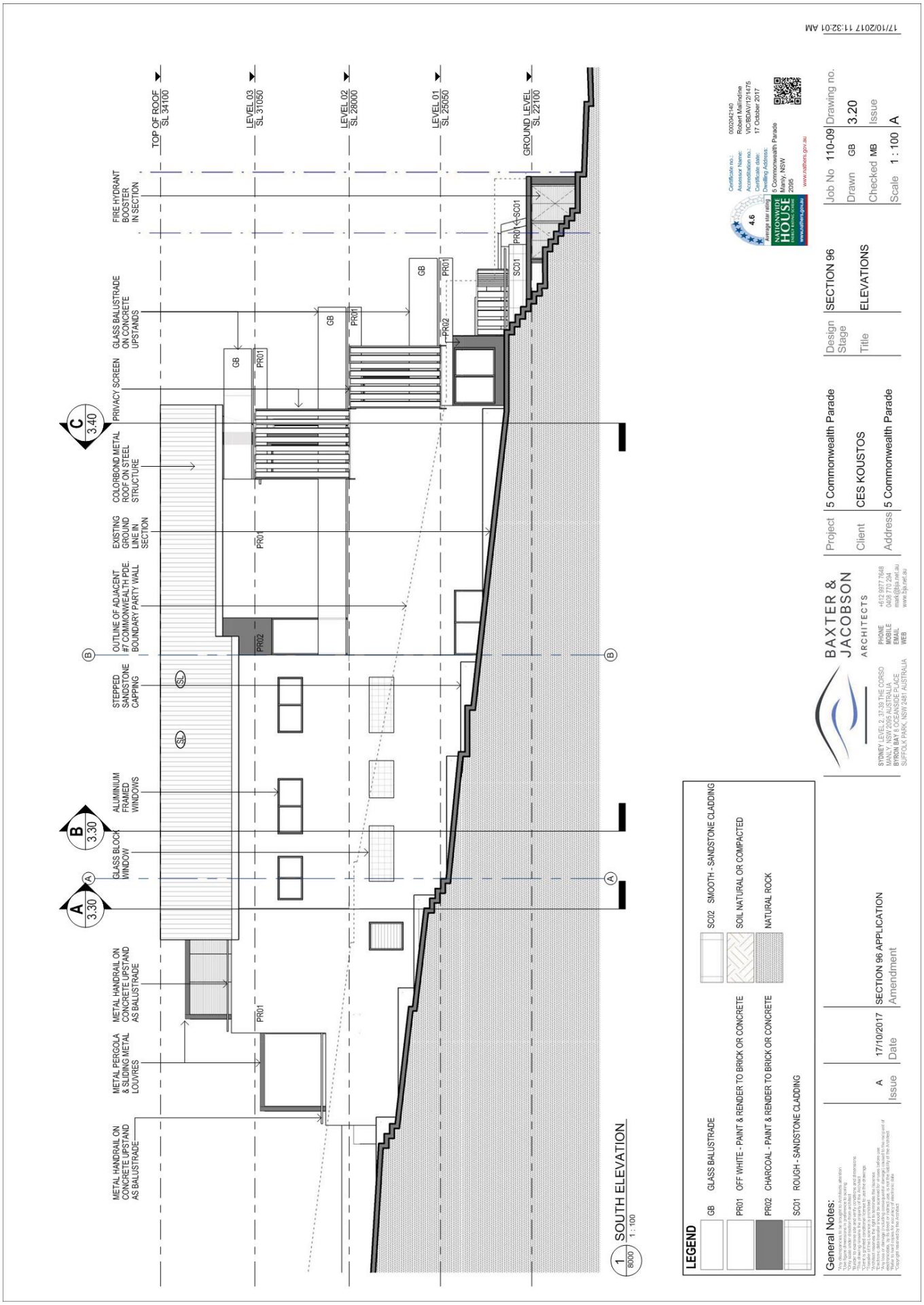
Project 5 Commonwealth Parade
Client CES KOUSTOS
Address 5 Commonwealth Parade
Design Stage SECTION 96
Title ELEVATIONS
Job No 110-09
Drawn GB
Checked MB
Scale 1 : 100
Drawing no. 3.00
Issue A
Certificate no.: 0002042140
Assessor Name: Robert Mallindine
Accreditation no.: VIC/BDAV/12/1475
Certificate date: 17 October 2017
Dwelling address: 5 Commonwealth Parade Manly, NSW 2095
Average star rating 4.6
NATIONWIDE HOUSE ENERGY RATING www.nathers.gov.au
17/10/2017 11:31:53 AM


NORTH ELEVATION
1 : 100
LEGEND
GB GLASS BALUSTRADE
PR01 OFF WHITE - PAINT & RENDER TO BRICK OR CONCRETE
PR02 CHARCOAL - PAINT & RENDER TO BRICK OR CONCRETE
SC01 ROUGH - SANDSTONE CLADDING
SC02 SMOOTH - SANDSTONE CLADDING
SOIL NATURAL OR COMPACTED
NATURAL ROCK
General Notes:
A 17/10/2017 SECTION 96 APPLICATION
Issue Date Amendment
TOP OF ROOF 34100 SL
LEVEL 03 31050 SL
LEVEL 02 28000 SL
LEVEL 01 25050 SL
GROUND LEVEL 22100 SL
BASEMENT 19250 SL
GLASS BALUSTRADE ON CONCRETE UPSTANDS
PRIVACY SCREEN
COLORBOND METAL ROOF ON STEEL STRUCTURE
EXISTING GROUND LINE IN SECTION
GLASS BLOCK WINDOW
OUTLINE OF ADJACENT #3 COMMONWEALTH PDE. BOUNDARY PARTY WALL
ALUMINIUM FRAMED WINDOWS
GLASS BLOCK WINDOW
METAL HANDRAIL ON CONCRETE UPSTAND AS BALUSTRADE
METAL PERGOLA & SLIDING METAL LOUVRES
METAL HANDRAIL ON CONCRETE UPSTAND AS BALUSTRADE
STEPPED PLANTER BEDS
EXHAUST SHAFT FROM BASEMENT CARPARKING
NEW WALL ON BOUNDARY
EXISTING FOOTPATH
ENTRY
PRIVACY SCREEN
PR01
PR02
GB
SC01
SC02
Certificate no.: 0020242140
Assessor Name: Robert Mallindine
Accreditation no.: VIC/BDAV/12/1475
Certificate date: 17 October 2017
Dwelling Address: 5 Commonwealth Parade Manly, NSW 2095
Average star rating 4.6
NATIONWIDE HOUSE ENERGY RATING SCHEME
www.nathers.gov.au
BAXTER & JACOBSON ARCHITECTS
SYDNEY LEVEL 2, 37-39 THE CORSO
MANLY, NSW 2095 AUSTRALIA
BYRON BAY 8 OCEANSIDE PLACE
SUFFOLK PARK, NSW 2481 AUSTRALIA
PHONE +612 9977 7648
MOBILE 0408 770 294
EMAIL mark@bja.net.au
WEB www.bja.net.au
Project 5 Commonwealth Parade
Client CES KOUSTOS
Address 5 Commonwealth Parade
Design Stage SECTION 96
Title ELEVATIONS
Job No 110-09
Drawn GB
Checked MB
Scale 1 : 100
Drawing no. 3.10
Issue A
17/10/2017 11:31:57 AM


17/10/2017 11:32:01 AM
TOP OF ROOF SL 34100
LEVEL 03 SL 31050
LEVEL 02 SL 28000
LEVEL 01 SL 25050
GROUND LEVEL SL 22100
FIRE HYDRANT BOOSTER IN SECTION
GLASS BALUSTRADE ON CONCRETE UPSTANDS
PRIVACY SCREEN
COLORBOND METAL ROOF ON STEEL STRUCTURE
EXISTING GROUND LINE IN SECTION
OUTLINE OF ADJACENT #7 COMMONWEALTH PDE. BOUNDARY PARTY WALL
STEPPED SANDSTONE CAPPING
ALUMINIUM FRAMED WINDOWS
GLASS BLOCK WINDOW
METAL HANDRAIL ON CONCRETE UPSTAND AS BALUSTRADE
METAL PERGOLA & SLIDING METAL LOUVRES
METAL HANDRAIL ON CONCRETE UPSTAND AS BALUSTRADE
C 3.40
B 3.30
A 3.30
GB
PR01
PR02
SC01
SL
1 SOUTH ELEVATION
1 : 100
LEGEND
GB GLASS BALUSTRADE
PR01 OFF WHITE - PAINT & RENDER TO BRICK OR CONCRETE
PR02 CHARCOAL - PAINT & RENDER TO BRICK OR CONCRETE
SC01 ROUGH - SANDSTONE CLADDING
SC02 SMOOTH - SANDSTONE CLADDING
SOIL NATURAL OR COMPACTED
NATURAL ROCK
General Notes:
Issue A 17/10/2017 Date SECTION 96 APPLICATION Amendment
Certificate no.: 0020247140
Assessor Name: Robert Mallinstone
Accreditation no.: VIC/BDAV/121475
Certificate date: 17 October 2017
Dwelling Address: 5 Commonwealth Parade Manly, NSW 2095
4.6 Average star rating
NATIONWIDE HOUSE ENERGY RATING SCHEME
www.nathers.gov.au
BAXTER & JACOBSON ARCHITECTS
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Project 5 Commonwealth Parade
Client CES KOUSTOS
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Design Stage SECTION 96
Title ELEVATIONS
Job No 110-09
Drawing no. 3.20
Drawn GB
Checked MB
Issue A
Scale 1 : 100