

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 14 FEBRUARY 2024

Ashleigh Sherry
Manager Business System and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 14 February 2024
via Teleconference
Commencing at 10:00 AM**

1.0	APOLOGIES & DECLARATIONS OF INTEREST	
2.0	MINUTES OF PREVIOUS MEETING	
2.1	Minutes of Development Determination Panel held 29 January 2024	2
3.0	DEVELOPMENT DETERMINATION PANEL REPORTS	3
3.1	REV2023/0022 - 16 Corella Street FRESHWATER - Review of Determination of Application DA2022/2237 for Subdivision of one lot into two including demolition works	3
3.2	DA2023/1269 - 161 A Seaforth Crescent SEAFORTH - Alterations and additions to a dwelling house including a spa pool.....	39
3.3	DA2023/1736 - 7 Halesmith Road MONA VALE - Alterations and additions to a dwelling house including a swimming pool.....	111
3.4	DA2023/1365 - 28 Sunrise Road PALM BEACH - Alterations and additions to a dwelling house	190
3.5	DA2023/1685 - 27 Rayner Road WHALE BEACH - Alterations and additions to a dwelling house	234
3.6	Mod2023/0555 - 5 Edgecliffe Boulevarde COLLAROY PLATEAU - Modification of Development Consent DA2018/1373 granted for Demolition works, construction of a new dwelling house including a swimming pool	284
3.7	DA2023/1578 - 21 Moore Street CLONTARF - Alterations and additions to a dwelling house including a swimming pool.....	300

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1 REV2023/0022 - 16 CORELLA STREET FRESHWATER - REVIEW OF DETERMINATION OF APPLICATION DA2022/2237 FOR SUBDIVISION OF ONE LOT INTO TWO INCLUDING DEMOLITION WORKS

PURPOSE

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

RECOMMENDATION

THAT Council as the consent authority **approves** Development Consent to for REV2023/0022 Review of Determination of Application DA2022/2237 for Subdivision of one lot into two including demolition works on land at Lot 1 DP 513727, 16 Corella Street FRESHWATER, subject to the conditions set out in the Assessment Report.

REPORTING MANAGER	Rodney Piggott
TRIM FILE REF	2024/080269
ATTACHMENTS	1 ↓Assessment Report

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2023/0022
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Responsible Officer:	Clare Costanzo
Land to be developed (Address):	Lot 1 DP 513727, 16 Corella Street FRESHWATER NSW 2096
Proposed Development:	Review of Determination of Application DA2022/2237 for Subdivision of one lot into two including demolition works
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	Yes
Owner:	Andrew James Braund
Applicant:	Andrew James Braund

Application Lodged:	19/09/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Subdivision only
Notified:	26/09/2023 to 10/10/2023
Advertised:	Not Advertised
Submissions Received:	4
Clause 4.6 Variation:	Nil
Recommendation:	Deferred Commencement Approval

Estimated Cost of Works:	\$ 415,000.00
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EXECUTIVE SUMMARY

This development application seeks consent for the review of determination of DA2022/2237 for Subdivision of one lot into two including demolition works. The application proposes to demolish the existing dwelling and associated structures at 16 Corella Street, Freshwater.

The required lot size is 450m², and the proposed presents a lot size of 451.4m² for Lot 1 and 450.3m² for Lot 2.

The application is referred to the Development Determination Panel (DDP) as it is a review of determination application DA2022/2237.

Concerns raised in the objections predominantly relate to stormwater and upgrades to the right of carriageway.

The reasons for refusal have been addressed as part of the review of determination and Council is satisfied with the information provided.

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

PROPOSED DEVELOPMENT IN DETAIL

The application comprises of a review of determination of development application DA2022/2237 for development consent for the Torrens Title subdivision of one (1) lot into (2) lots (Figure 1) and the demolition of existing structures on site.

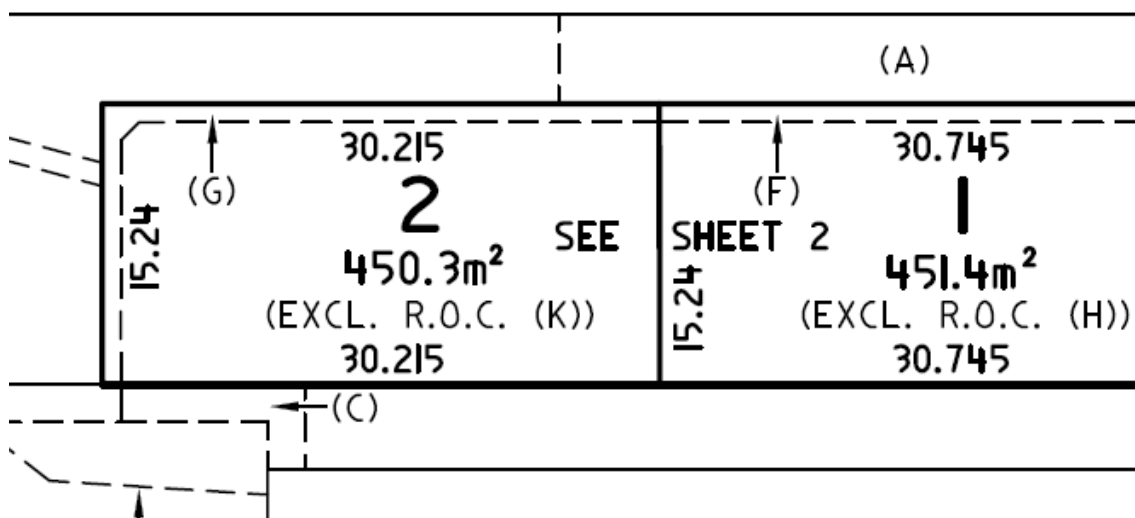


Figure 1: Exert of the proposed subdivision indicating Lot 1 and Lot 2

The works comprise of the demolition of structures on site. A demolition plan has been provided by the applicant.

The following reasons for refusal have been addressed:

1. Pursuant to Section 4.15(1)(a)(iv) of the Environmental Planning and Assessment Act 1979, insufficient information has been submitted in support of the application.

Comment:

Sufficient information has been provided as part of the review of determination for Council to finalise its assessment. The applicant also provided legal advice which was reviewed and concurred with by Council that land owners consent for easement purposes and driveway upgrade works can be dealt with via a deferred commencement approval.

Council has the power to impose this condition under section 4.17(1)(f) of the EP&A Act to require the upgrade works to the right of carriageway as a deferred commencement condition.

2. Pursuant to Section 4.15(1)(a)(i) & (iii) Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with Clause 1.2 Aims of the Plan of the Warringah Local Environmental Plan 2011; and Clause C1 Subdivision, C2 Traffic, Access and Safety and C4 Stormwater of the Warringah Development Control Plan 2011.

Comment:

The issues regarding non compliance with the Warringah Development Control Plan have been addressed within the report. Specifically issues regarding access and stormwater can be addressed via a deferred commencement approval which will require stormwater and ROW upgrades to be addressed prior to any operational consent approval. The upgrade works to the ROW must be completed prior to the operational approval and in the event the driveway upgrade works are not Exempt Development pursuant to State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 they will be subject to separate development consent.

3. Pursuant to Section 4.15(1)(b) and Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the site is not considered suitable for the proposed development and will have an adverse impact on the natural environment.

Comment:

The significant rock outcrops located on proposed Lot 2 are located outside of the indicative building footprints and therefore retained.

The subdivision layout indicative building footprints have been located to retain the unique environmental features of the site being the exposed rock outcrops towards the centre and rear of the existing allotment. Any future application for the construction of a dwelling house on this lot will need to ensure consideration is made to the protection of the rock outcrop.

Conditions for rock outcrop protection shall be applicable to suit any future applications for dwelling/garage construction upon each Lot, should this application be approved.

4. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.

Comment:

The applicant has provided sufficient information to support the review of determination to ensure the development will be approved within the public interest. The deferred commencement approval will ensure all stormwater and access upgrade works will be addressed prior to operational consent and the formal subdivision.

Further detail on each issue has been discussed further within the assessment report.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 8.3 - Environmental Planning and Assessment Act 1979 - Section 8.3

Warringah Development Control Plan - B1 Wall Heights

Warringah Development Control Plan - B3 Side Boundary Envelope

Warringah Development Control Plan - B5 Side Boundary Setbacks

Warringah Development Control Plan - B7 Front Boundary Setbacks

Warringah Development Control Plan - B9 Rear Boundary Setbacks

Warringah Development Control Plan - C1 Subdivision

Warringah Development Control Plan - C2 Traffic, Access and Safety

Warringah Development Control Plan - C4 Stormwater

Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting

Warringah Development Control Plan - D2 Private Open Space

Warringah Development Control Plan - E6 Retaining unique environmental features

SITE DESCRIPTION

Property Description:	Lot 1 DP 513727 , 16 Corella Street FRESHWATER NSW 2096
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the western side of Corella Street.</p> <p>The subject site is legally identified as Lot 1, in Deposited Plan 513727, No. 16 Corella Street, Freshwater The site is rectangular in shape with a street frontage of 15.24m and a depth of 60.96m. The site has a surveyed area of 60.96m².</p> <p>The site is located within the R2 Low Density Residential zone under the provisions of the Warringah Local Environmental Plan 2011 and accommodates a dwelling house. A right of carriageway also exists with access via an existing driveway through adjoining property No 16A Corella Street.</p>

	<p>The site topography slopes downward from east to west by approximately 5.0m.</p> <p>The site consists of lawn areas, various trees and vegetation throughout, with large rock outcrops to the rear of the property.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by residential development, several consisting of battle-axe allotments, with one (1) lot in front. Harbord Primary School is located to the west.</p>
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Map:



SITE HISTORY

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

PLM2020/0073

Pre-lodgment Meeting held on 21 April 2020 for the demolition of an Existing Dwelling House and Subdivision of one Lot into two Lots. It was noted that the proposal may be supported subject to demonstrating that the resulting lots are capable of being developed in accordance with the built form controls of the WLEP and WDCP 2011.

Furthermore, the application was to demonstrate that Stormwater drainage and vehicular access for the proposed lots can be appropriately facilitated in accordance with Council's Policies.

DA2022/2237

Development Application for the Subdivision of one lot into two including demolition works was refused by Northern Beaches Council under delegation on the 18 May 2023. The application was refused for a number of reasons, which included:

- Insufficient information provided to assess the application
- Non compliance with Warringah Development Control Plan subdivision, traffic access and safety and stormwater
- Adverse impact on the natural environment
- Application is not in the public interest

There is concurrently an appeal of the development application DA2022/2237 with the Land and Environment Court. The lodgment of the appeal enabled the applicant to extend the assessment period of this review application.

Application History

The review was lodged on 14 September 2023 and is to be considered by the Northern Beaches Development Determination Panel prior to the 18 November 2023, which is within 6 months of the date of determination. Following preliminary assessment of the application the additional information was requested and the applicant was unable to provide this information within a timely manner and as such the applicant lodged a Class 1 appeal of the development application to the Land and Environment Court. By doing so the applicant extended the period for the review of determination application and as such it is still valid past the 6 month period.

The applicant responded by providing Council with legal advice that was reviewed internally by Council. It was deemed the issues regarding stormwater and right of carriageway upgrades could be resolved via conditions of consent and a deferred commencement.

The applicant also provided Council with engineering plans detailing access, longitudinal sections, chainages and swept paths and an amended statement of environmental effects. These were reviewed by Council's Development Engineer who were satisfied it would be possible to complete works in the future to the standard required to meet all relevant Council and Australian Standard requirements.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development	Warringah Development Control Plan applies to this proposal.

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

In accordance with Section 8.3 of the Act, an applicant may request Council to review a determination of a development application, other than for a complying development, integrated development, designated development or a determination made by Council in respect to an application by the Crown. The development application does not fall into any of these categories, therefore the applicant may request a review.

In accordance with Section 8.3 (2) of the Act, the request for the review must be made and determined within 6 months after the date of determination of the development application. The application was determined on 18 May 2023 and the notice of determination was issued on 18 May 2023. The review was lodged on 14 September 2023 and is to be considered by the Northern Beaches Development Determination Panel prior to the 18 November 2023, which is within 6 months of the date of determination. Following preliminary assessment of the application the additional information was requested and the applicant was unable to provide this information within a timely manner and as such the applicant lodged a Class 1 appeal of the development application to the Land and Environment Court. By doing so the applicant extended the period of for the review of determination application and as such it is still valid past the 6 month period.

Section 8.3 (3) provides that the Council may review a determination if in the event that the applicant has made amendments to the development described in the original application, the consent authority is satisfied that the development, as amended, is substantially the same as the development described in the original application.

The amendments to the proposal are outlined in the ‘Detailed Description of Works’ section of this report.

A review of the original and amended plans has found that there are fundamental similarities between the original and the amended design (being subject of the 8.3 review) and the nature of the intended land use remains the same. Accordingly it is concluded that the amended scheme is substantially the same as the original proposal. Accordingly, it is considered that the proposal satisfies the requirement of Section 8.3 (3) of the Act

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 26/09/2023 to 10/10/2023 in accordance with

the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 4 submission/s from:

Name:	Address:
Jonathan Philip Clare	14 Corella Street FRESHWATER NSW 2096
Mr John Gardner Vaubell	16 A Corella Street FRESHWATER NSW 2096
Mr Ian John Greentree	PO Box 59 FRESHWATER NSW 2096
Mrs Alison Claire Vaubell	16 A Corella Street FRESHWATER NSW 2096

The following issues were raised in the submissions:

- Rezoning
- Stormwater
- Works to the Right of Carriageway

The above issues are addressed as follows:

- **Rezoning**

The submissions raised concerns that there is no information provided to identify how the property will be separated and concerned regarding the rezoning.

Comment:

The application does not propose any rezoning. The application comprises of a torrens title subdivision of one lot into two lots. Should the development application be approved the applicant will be required to register the Lots.

- **Stormwater**

The submissions raised concerns that the development will result in a significant increase in stormwater runoff and concerns are raised regarding how it will be managed.

Comment:

The application has been reviewed by Council's Development Engineer who is satisfied stormwater management can be dealt with through a deferred commencement which will require the applicant to ensure adequate provision are made for stormwater drainage from the site in a proper manner that protects adjoining properties prior to operational consent.

- **Works to the Right of Carriageway**

The submissions raised concerns that works to upgrade the existing Right of Carriageway will have an impact on their property and they are not supportive of the works.

Comment:

Sufficient information has been provided as part of the review of determination for Council to finalise its assessment. The applicant provided legal advice which was reviewed and concurred with by Council.

Council has the power to impose a condition under section 4.17(1)(f) of the EP&A Act to require the upgrade works to the right of carriageway as a deferred commencement condition.

The upgrade works to the right of carriageway will be included as a condition of deferred commencement and operational consent will not be granted until the applicant can satisfy the deferred commencement conditions. The applicant will be required to provide Council with owners consent from No. 14a Corella Street for the upgrade works and detailed plans indicative of the following:

- 1) Longitudinal section of ROW with existing and proposed levels, grades and chainage at an interval of 0.5m.
- 2) Details of passing bay
- 3) Show 4.85m wide clear ROW available for vehicle movements as currently seems like only 3m width is available due to presence of landscaping, refer below
- 4) This 4.85m wide clear ROW to be available from street frontage to entry of proposed Lot No 2.
- 5) Swept paths of vehicle movements (both in and out) from both lots.

This will ensure suitable and safe provision is made for vehicular access to the proposed allotments.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The proposal is supported with regard to landscape issues.</p> <p>The application is assessed by Landscape Referral against Warringah Local Environment Plan 2011, and the following Warringah Development Control Plan (WDGP) 2011 controls (but not limited to):</p> <ul style="list-style-type: none"> • C1 Subdivision • E1 Preservation of Trees or Bushland Vegetation • E6 Retaining unique environmental features <p>It is Landscape Referrals understanding that the application proposes to demolish the existing dwelling and adjust the boundaries through subdivision only. The subdivision layout indicative building footprints have been located to retain the unique environmental features of the site being the exposed rock outcrops towards the centre and rear of the existing allotment. Trees are located around the dwelling and shall be protected during demolition works.</p> <p>Conditions for rock outcrop protection and for further tree and vegetation protection shall be applicable to suit any future applications for dwelling/garage construction upon each Lot, should this application be approved.</p>

Internal Referral Body	Comments
NECC (Coast and Catchments)	<p>DA2022/2237 was assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Resilience & Hazards) 2021 and was also assessed against requirements of the Warringah LEP 2011 and Warringah DCP 2011. This assessment raised no objection to the approval of DA2022/2237.</p> <p>The documentation provided with this review application does not alter this assessment. Therefore the review application is supported.</p>
NECC (Development Engineering)	<p>30/01/2024: As per statement of environmental effects report (internal Ref: TRIM2023/849320) , there is no proposal for any works on the existing ROW but as assessed earlier in Dec 2023, existing ROW is not suitable for intensification, will not sustain the demolition of existing house and further construction works for both lots, hence works are required on the existing ROW. In the statement of environmental effects report, applicant is ok with Council to impose deferred commencement condition for stormwater drainage easement and driveway upgrade works.</p> <p>Existing Row is more than 30m in length, hence under Clause C1 of Warringah DCP there is requirement of a passing bay. Latest submission (Internal ref: TRIM 2024/849318) shows provision of passing bay within proposed lots.</p> <p>Development Engineering have no objections and , deferred commencement conditions for stormwater drainage easement and driveway upgrade work are proposed.</p> <p>31/10/2023: Subdivision of one lot into two including demolition works. No dwellings are proposed with the subdivision. Any new dwellings will require consent in the future.</p> <p>Access Proposal is to provide vehicular access to both lots via existing ROW which runs through the 16A Corella Street. This existing ROW is not suitable for intensification, will not sustain the demolition of existing house and further construction works for both lots. Hence existing ROW requires re-construction with defined passing bays. Under the definition of ROW, No 16 can only use it for access but cannot do any amendments. Applicant requires consent from No 16A to do any amendments to existing ROW. Plans to be provided showing details.</p> <p>Stormwater Proposal is to drain site stormwater to Council system in Oliver street via proposed easement with Harbord School and 14A Corella Street. No agreement letter or consent from Harbord School and 14A Corella Street is provided.</p>

Internal Referral Body	Comments
	This can be taken care via a deferred commencement condition.
NECC (Flooding)	The property is not tagged as being flood affected so there are no applicable flood related development controls.
NECC (Water Management)	<p>Supported</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none">• Supplied plans and reports;• Northern Beaches Water Management for Development Policy (WM Policy); and• Relevant LEP and DCP clauses <p>The proposal is a subdivision resulting in the creation of two (2) lots where the total post-development impervious area of the new lots does not exceed 40%.</p>
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	This application has been referred as it is in the vicinity of a local heritage item, being Item I77 - Harbord Public School , corner of Wyadra Road and Oliver Street, Freshwater,
	Details of heritage items affected
	Item I77 - Harbord Public School
	<u>Statement of Significance</u>
	A representative example of an inter-war school building. Displays high integrity of fabric & use. Historically provides evidence of the early need for educational infrastructure to serve a permanent community. Mature pines are local landmarks.
	Other relevant heritage listings
	SEPP (Biodiversity and Conservation) 2021
	No
	Australian Heritage Register
	No
NSW State Heritage Register	
No	
National Trust of Aust (NSW) Register	
No	
RAIA Register of 20th Century Buildings of Significance	
No	
Other	
No	
Consideration of Application	
The proposal seeks a review of the previous application for subdivision which was refused. Heritage raised no concerns with the prior proposal and required no conditions. The proposal has been referred to Heritage due to the site being within proximity to	

Internal Referral Body	Comments
	<p>the heritage listed Harbord Public School site. However the significant building is located at the corner of Oliver Street and Wyadra Avenue, over 180m away from the site. As such this proposal is considered to not impact the heritage item or its significance.</p> <p>Therefore Heritage raises no objections and requires no conditions.</p> <p>Consider against the provisions of CL5.10 of WLEP.</p> <p>Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No</p>
External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

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

Comment:

The consent authority is satisfied the application is not expected to have an impact on any of the above. Development Application DA2022/2237 was assessed by Council's Coastal Engineer in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Resilience & Hazards) 2021 and was also assessed against requirements of the Warringah LEP 2011 and Warringah DCP 2011. This assessment raised no objection to the approval of DA2022/2237.

The documentation provided with this review application does not alter this assessment. Therefore the review application is supported.

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

Comment:

The consent authority is satisfied the application is designed, sited and will be managed to avoid an adverse impact on the above in subsection (1). Development Application DA2022/2237 was assessed by Council's Coastal Engineer in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Resilience & Hazards) 2021 and was also assessed against requirements of the Warringah LEP 2011 and Warringah DCP 2011. This assessment raised no objection to the approval of DA2022/2237.

The documentation provided with this review application does not alter this assessment. Therefore the review application is supported.

Division 5 General

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

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

Comment:

The consent authority is satisfied the development is not likely to cause increased risk of coastal hazards on that land or other land.

2.13 Development in coastal zone generally—coastal management programs to be considered

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Comment:

The consent authority has taken into consideration the relevant provisions of any certified coastal management program applicable to the land.

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

Chapter 4 – Remediation of Land

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

a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum subdivision lot size:	Lot 1:450sqm	Lot 1: 451.4sqm	N/A	Yes
	Lot 2: 450sqm	Lot 2: 450.3sqm	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision - consent requirements	Yes
4.1 Minimum subdivision lot size	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	Cannot be assessed as only future building footprint is required	N/A	N/A
B3 Side Boundary Envelope	5m	Cannot be assessed as only future building footprint is required	N/A	N/A
B5 Side Boundary Setbacks	0.9m (northern)	Both Lots capable of compliance	N/A	Yes
	0.9m (southern)	Both Lots capable of compliance	N/A	Yes
B7 Front Boundary Setbacks	6.5m	Lot 1: Demonstrates compliance Lot 2: 0.1m (garage)	98.5%	Yes No
B9 Rear Boundary Setbacks	6m	Lot 1: 0.1m (garage) Lot 2: Demonstrates compliance	98.4% N/A	No Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	Both Lots capable of compliance	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	N/A	N/A
B3 Side Boundary Envelope	N/A	N/A
B5 Side Boundary Setbacks	N/A	N/A
B7 Front Boundary Setbacks	N/A	N/A
B9 Rear Boundary Setbacks	N/A	N/A
C1 Subdivision	No	Yes
C2 Traffic, Access and Safety	No	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	N/A	N/A
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment**B1 Wall Heights**

No physical works (i.e. construction of dwelling houses) are proposed within this development application, in exception of demolition works.

However, the indicative building footprints for both Lot 1 and Lot 2 have been assessed where possible. The wall height of any proposed new dwelling on either Lot will be subject to assessment under a separate application.

B3 Side Boundary Envelope

No physical works (i.e. construction of dwelling houses) are proposed within this development application, in exception of demolition works.

However, the indicative building footprints for both Lot 1 and Lot 2 have been assessed where possible. The side boundary envelope of any proposed new dwelling on either Lot will be subject to assessment under a separate application.

B5 Side Boundary Setbacks

No physical works (i.e. construction of dwelling houses) are proposed within this development application, in exception of demolition works.

However, the indicative building footprints for both Lot 1 and Lot 2 have been assessed where possible. The side setbacks of the indicative building footprints for both Lot 1 and Lot 2, exhibit compliance with the numerical requirements of this clause.

B7 Front Boundary Setbacks

No physical works (i.e. construction of dwelling houses) are proposed within this development application, in exception of demolition works.

However, the indicative building footprints for both Lot 1 and Lot 2 have been assessed where possible. The front setbacks of the indicative building footprints for Lot 1 exhibit compliance with the numerical requirements of this clause. However, Lot 2 exhibits non-compliance with the numerical requirements of this clause. The non compliance is a result of the proposed garage. Any non compliances will be subject to merit assessment under any future development applications.

Council is satisfied the footprint of both dwellings are capable of compliance with this control.

B9 Rear Boundary Setbacks

No physical works (i.e. construction of dwelling houses) are proposed within this development application, in exception of demolition works.

However, the indicative building footprints for both Lot 1 and Lot 2 have been assessed where possible. The rear setbacks of the indicative building footprints for Lot 1 exhibit compliance with the numerical requirements of this clause. However, Lot 1 exhibits non-compliance with the numerical requirements of this clause. The non compliance is a result of the proposed garage. Any non compliances will be subject to merit assessment under any future development applications.

Council is satisfied the footprint of both dwellings are capable of compliance with this control.

C1 Subdivision

Component	Requirement	Proposed	Compliant
Lot requirements	R2 Low Density Residential zone requirements:	The minimum width for both lots if 15.24m and the minimum depth for both lots is 30.215m.	Yes Yes
	Proposed new allotments:		
	a) Minimum width: 13 metres b) Minimum depth: 27 metres; and c) Minimum building area: 150m ²	The building area, as defined under the Warringah Development Control Plan is the footprint of the building on the site measured from the external faces of the external walls including garages/parking areas but excluding driveways. The minimum building area of each Lot includes a garage and therefore is compliant with the	Yes Yes

		control. The minimum building area for Lot 1 is 152m ² and Lot 2 is 178m ² .	
Access	<p>Motor vehicle access to each residential allotment is required from a constructed and dedicated public road.</p> <p>Where access is proposed to a section of unconstructed public road, then the subdivision will need to provide legal, constructed access to the Council's satisfaction.</p> <p>Access for Council service vehicles, emergency vehicles and garbage collection vehicles must be provided.</p> <p>Driveways, accessways, etc, to allotments should have a gradient not exceeding 1:4 and allow for transitions at a minimum length of 1.5m and at a grade no steeper than 1:10.</p> <p>Driveways in excess of 200 metres will not be allowed for residential development.</p> <p>Driveways that are 30m or more in length require a passing bay to be provided every 30m. To provide a passing bay, driveways shall be widened to 5.0m for a distance of at least 10m.</p> <p>Passing bays should have regard to sight conditions and minimise vehicular conflict.</p> <p>Vehicular ingress/egress points to internal lots may be used as passing/turning bays, subject to extension of a right-of-carriageway over the passing/turning bay.</p> <p>Rights-of-carriageway should be</p>	<p>The proposal seeks to provide vehicular access to both lots via existing ROW which runs through the 16A Corella Street. This existing ROW is not suitable for intensification and is not expected to sustain the demolition of existing house and further construction works for both lots. As such, the existing ROW requires reconstruction with defined passing bays, as the driveway will be longer than 30m.</p> <p>The application has been assessed by Council's development engineer who is satisfied the upgrade works required can be satisfied via a conditions of consent through a deferred commencement.</p> <p>As such, the proposed works can be compliant with the vehicle access requirements to provide appropriate access to Councils satisfaction, subject to satisfying the deferred commencement conditions.</p>	Yes, on merit

	<p>located so as to accommodate all vehicle turning facilities.</p> <p>Width of accessways are to be as follows:</p> <table><tr><th>Number of lots to be serviced</th><th>Width of clear constructed accessway (m)</th></tr><tr><td>1 - 5</td><td>3.5</td></tr><tr><td>6 - 10</td><td>5.0</td></tr><tr><td>in excess of 10</td><td>Access is to be provided by a private or public road constructed with a width that is in accordance with Council standard specifications for engineering works (AUSPEC 1)</td></tr></table> <p>Provision of services in rights of carriageway are as follows:</p> <table><tr><th>Number of lots to be serviced</th><th>Additional width to be provided in Right of Carriageway (m)</th></tr><tr><td>Up to 3 lots</td><td>0.5</td></tr><tr><td>4 or more lots</td><td>1.0</td></tr></table>	Number of lots to be serviced	Width of clear constructed accessway (m)	1 - 5	3.5	6 - 10	5.0	in excess of 10	Access is to be provided by a private or public road constructed with a width that is in accordance with Council standard specifications for engineering works (AUSPEC 1)	Number of lots to be serviced	Additional width to be provided in Right of Carriageway (m)	Up to 3 lots	0.5	4 or more lots	1.0	
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Number of lots to be serviced	Additional width to be provided in Right of Carriageway (m)															
Up to 3 lots	0.5															
4 or more lots	1.0															
Design and construction	<p>All roads, rights of carriageway, drainage design and construction is to be in accordance with Council's policy requirements including; AUSPEC 1 - Council's Specification for Engineering Works, Development Engineering Minor Works Specification, On Site Stormwater Detention (OSD) Technical Specification and Council's Water Sensitive Urban Design Policy. Additionally, internal roads must be designed in accordance with the relevant Australian Standards.</p>	<p>The application has been assessed by Council's development engineer who is satisfied that the works are capable of compliance with the relevant subdivision controls subject to the recommended conditions of consent through deferred commencement.</p> <p>Legal advice was provided by the applicant and reviewed by Council's legal counsel and the development engineer and as such right of carriage way upgrade works to support the</p>	<p>Yes, on merit.</p>													

	Subdivision design needs to maximise and protect solar access for each dwelling by considering factors such as orientation, shape, size and lot width.	application can be dealt with via a deferred commencement.	
Drainage	Provision should be made for each allotment to be drained by gravity to a Council-approved drainage system. The topography of the land should not be altered to adversely affect the natural drainage patterns. Stormwater should drain directly to a Council-approved drainage system and not via adjoining properties unless via a formalised interallotment drainage system. The proposed allotments are to be drained to the direction of the natural fall of the land. Interallotment drainage easements will be required through adjoining properties to adequately drain land to Council's downstream system.	The application has been assessed by Council's development engineer who is satisfied that the works are compliant with the relevant subdivision controls subject to the satisfaction of the deferred commencement conditions.	Yes
Restrictions	Any easement, right-of-carriageway, or other restriction that is placed on the title of any land as a requirement of the approval of the subdivision is to be protected by a positive covenant or like instrument with the Council nominated as a party.	<p>The proposal seeks to drain site stormwater to Council system in Oliver street via proposed easement with Harbord School and 14A Corella Street.</p> <p>No agreement letter or consent from Harbord School and 14A Corella Street is provided.</p> <p>This can be taken care via a deferred commencement condition and as such is acceptable.</p>	Yes, on merit.
Environmentally constrained land	<p>In areas subject to constraints such as flooding, tidal inundation, threatened species, landslip risk, bushfire or any other matter, adequate safe area for building, where the risk from hazard is minimised, is to be provided within an allotment.</p> <p>Where possible, lot boundaries should utilise natural land</p>	<p>The site is not identified as being environmentally constrained land such as flooding, tidal inundation, threatened species, landslip risk or bushfire.</p> <p>The subdivision layout indicative building footprints have been located to retain the unique environmental features of the site being the</p>	Yes

	features such as creeks, escarpments and rock outcrops.	exposed rock outcrops towards the centre and rear of the existing allotment. Trees are located around the dwelling and shall be protected during demolition works. Conditions for rock outcrop protection and for further tree and vegetation protection shall be applicable to suit any future applications for dwelling/garage construction upon each Lot, should this application be approved.	
Bushfire	Subdivision should be designed to minimise the risk from potential bushfire. Asset protection zones should be contained within the property boundaries of the new subdivision.	The site is not located within bushfire prone land and therefore not applicable to the application.	N/A

C2 Traffic, Access and Safety

The application has been assessed by Council's development engineer who is satisfied that the works are compliant with the relevant traffic, access and safety controls subject to the recommended conditions of consent.

C4 Stormwater

The application has been assessed by Council's development engineer who is satisfied that the works are compliant with the relevant stormwater controls subject to the recommended conditions of consent requiring a deferred commencement to ensure appropriate physical upgrades are constructed to support the proposed subdivision works.

D1 Landscaped Open Space and Bushland Setting

No physical works (i.e. construction of dwelling houses) are proposed within this development application, in exception of demolition works.

However, the indicative building footprints for both Lot 1 and Lot 2 have been assessed where possible. The indicative building footprints show that both sites are capable of compliance with the control in any future development.

D2 Private Open Space

No physical works (i.e. construction of dwelling houses) are proposed within this development application, in exception of demolition works.

However, the indicative building footprints for both Lot 1 and Lot 2 have been assessed where possible. The front setbacks of the indicative building footprints for Lot 1 exhibit compliance with the numerical requirements of this clause.

Council is satisfied the footprint of both dwellings are capable of compliance with this control.

E6 Retaining unique environmental features

The subdivision layout indicative building footprints have been located to retain the unique environmental features of the site being the exposed rock outcrops towards the centre and rear of the existing allotment.

Conditions for rock outcrop protection shall be applicable to suit any future applications for dwelling/garage construction upon each Lot, should this application be approved.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$4,150 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$415,000.

CONCLUSION

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

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

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

In consideration of the proposal and the merit consideration of the development, the proposal is

considered to be:

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

Conclusion

This Review application, for the Torrens Title subdivision of one (1) lot into (2) lots and the demolition of existing structures is referred to the DDP due to the previous Development Application (DA2022/2237), having been referred to the panel. This is due to the requirement under Clause 8.3 of the EPA Act requiring a determination by a delegate "who is not subordinate to the delegate who made the determination or decision.

The critical assessment issues relating to owners consent have been resolved to the satisfaction of Council and are detailed within this assessment report.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment.

The proposal has therefore been recommended for approval.

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

RECOMMENDATION

DEFERRED COMMENCEMENT APPROVAL

A. THAT Council as the consent authority grant a Deferred Commencement Development Consent being subject to a two (2) year time frame for Deferred Commencement Consents detailed within Clause 76 of the Environmental Planning and Assessment Regulation 2021 to REV2023/0022 for Review of Determination of Application DA2022/2237 for Subdivision of one lot into two including demolition works on land at Lot 1 DP 513727, 16 Corella Street, FRESHWATER, subject to the conditions printed below:

B. THAT once the matters detailed within the Deferred Commencement Development Consent conditions are satisfactorily addressed then an operational development consent be issued subject to the time frames detailed within Part A of this recommendation.

Terms and Reasons for Conditions

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

DEFERRED COMMENCEMENT CONDITIONS

1. **Deferred Commencement**

Evidence required to satisfy these conditions must be submitted to Council within two (2) years of the date of this consent, or the consent will lapse in accordance with the Environmental Planning and Assessment Regulation.

Applicants must submit a request for operational consent to Council via the NSW Planning Portal and upload all relevant documentation. This can be completed through accessing the relevant portal application ID and navigating to 'Request for Operational Consent' in the Actions dropdown menu.

2. **Stormwater Drainage Easement**

As the natural fall of the land is towards the rear of the site the disposal of stormwater drainage is to be in accordance with the drainage plan submitted by RTS Civil Consulting Engineers, Project No 211006, Drawing No SW100, SW101-103 & SW200, Rev C, Dated 13/09/2023. The inter-allotment drainage easement and easement with Harbord School and 14A Corella Street is to be created under Sections 46 and/or 46A of the Real Property Act 1900 No 25 or under Sections 88B and/or 88K of the Conveyancing Act 1919. The applicant must provide Council with evidence of the created easements on title and construction of the drainage line in order to activate the consent.

Stormwater drainage plans are to be submitted to Council for written approval detailing disposal of stormwater from the site in accordance with Council's Water Management for Development Policy.

Reason: To ensure adequate provision is made for stormwater drainage from the site in a proper manner that protects adjoining properties.

3. **Driveway Upgrade Works**

The existing driveway within the right of way within 16A Corella is to be constructed to incorporate the following:

- A 3.5m wide driveway in accordance with AS/NZS 2890.1:2004, Parking facilities, Part 1: Off-street car parking or AS 2890.2:2018, Parking facilities, Part 2: Off-street commercial vehicle facilities, within the right of carriageway shown as (A) on the subdivision plan prepared by surveyor Copland C Lethbridge, Ref: 22176 DP, Rev 02, Dated 04/08/2023.
- A 3.5m wide driveway crossing between the boundary of 16A Corella and street kerb including a layback with 600mm wings on either side in accordance with Council standard specifications

The applicant must provide Council with evidence of the constructed driveway and crossing works in order to activate the consent.

Reason: To ensure suitable and safe provision is made for vehicular access to the proposed allotments.

Evidence required to satisfy the deferred commencement condition/s must be submitted to Council within two (2) years of the date of this consent, or the consent will lapse in accordance with Clause 76 of the Environmental Planning and Assessment Regulation 2021. This evidence is to be submitted along with a completed 'Deferred Commencement Document Review Form' (available on Council's website) and the application fee, as per Council's Schedule of Fees and Charges.

Upon satisfaction of the deferred commencement condition/s, the following conditions apply:

GENERAL CONDITIONS

4. Approved Plans and Supporting Documentation

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
Rev02	n/a	Sheet 1 of 2 - Plan of proposed subdivision	Copland C. Lethbridge	4 August 2023
Rev02	n/a	Sheet 2 of 2 - Plan of proposed subdivision	Copland C. Lethbridge	4 August 2023
D01	n/a	Demolition Plan	N/A	15 May 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Preliminary Geotechnical Assessment	n/a	White Geotechnical Group	7 November 2022

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

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

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

5. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	9 October 2023

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

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

6. Prescribed Conditions

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

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative requirement.

7. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
 - 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,
 - No work on Sundays and Public Holidays.
Demolition and excavation works are restricted to:
 - 8.00 am to 5.00 pm Monday to Friday only.
(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).
- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the following is required:
 - i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
 - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
 - iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The

amount payable is subject to indexation at the time of payment.

- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

8. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$4,150.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$415,000.00.

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

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

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

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

9. Security Bond

A bond (determined from cost of works) of \$5,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

All bonds and fees shall be deposited with Council prior to Construction Certificate or

demolition work commencing, and details demonstrating payment are to be submitted to the Certifier prior to the issue of the Construction Certificate.

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

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

BEFORE ISSUE OF A SUBDIVISION WORKS CERTIFICATE

10. **Subdivision Works Certificate**

A Subdivision Works Certificate is to be approved by Certifying Authority for the provision of engineering works.

Engineering plans for the subdivision works within this development consent are to be submitted to the Certifying Authority for approval under Section 6.13 of the Environmental Planning and Assessment Act 1979.

Civil Engineering plans for the subdivision works are to be designed in accordance with the Council's specification for engineering works – AUS-SPEC #1. The plans shall be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) and registered in the General Area of Practice for civil engineering. The design must include the following information:

1. internal driveway areas as marked as easements (H),(K) and (L) on subdivision plan by surveyor Copland C Lethbridge, Ref: 22176 DP, Rev 02, Dated 04/08/2023
2. inter-allotment stormwater drainage as marked as easement (G) of subdivision plan by surveyor Copland C Lethbridge, Ref: 22176 DP, Rev 02, Dated 04/08/2023 and generally in accordance with proposed pits No 5, 6 and 7 of RTS Civil Consulting Engineers, Project No 211006, Drawing No SW100,SW101-103 & SW200 , Rev C, Dated 13/09/2023

The Subdivision Works Certificate must be supported by engineering plans, calculations, specification or any certification relied upon.

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specifications

11. **Utilities Services**

Prior to the issue of the Subdivision Works Certificate, written evidence of the following service provider requirements must be provided to the Principal Certifier:

- a) a letter from Ausgrid demonstrating that satisfactory arrangements can be made for the installation and supply of electricity,
- b) a response from Sydney Water as to whether the proposed works subject to this consent would affect any Sydney Water infrastructure, and whether further requirements need to be met, and
- c) other relevant utilities or services - that the development as proposed to be carried out is satisfactory to those other service providers, or if it is not, the changes that are required to make the development satisfactory to them.

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

Reason: To ensure relevant utility and service providers' requirements are provided to the Principal Certifier.

DURING BUILDING WORK

12. Tree and Vegetation Protection

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

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

b) tree protection shall be undertaken as follows:

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

c) the Principal Certifier must ensure that:

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

Reason: Tree and vegetation protection.

13. Condition of Trees

- a) during the construction period the applicant is responsible for ensuring all existing trees

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

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

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

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

Reason: Protection of trees.

14. Removing, Handling and Disposing of Asbestos

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

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

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

BEFORE ISSUE OF A SUBDIVISION CERTIFICATE

15. Easement for Services

The Applicant shall create an easement for services (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision, to accompany the Section 88B instrument to ensure all utility services are located within the appropriate easement(s).

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

Reason: Council's Subdivision standards and statutory requirements of the Conveyancing Act 1919.

16. Provision of Services for Subdivision

The applicant is to ensure all services including water, electricity, telephone and gas are

provided, located and certified by a registered surveyor on a copy of the final plan of subdivision.

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

Reason: To ensure that utility services have been provided to the newly created lots.

17. Right of Carriageway

The Applicant shall create a right of carriageway (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision and accompanying 88B instrument, to include all vehicular access and manoeuvring areas.

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

Reason: Council's subdivision standards and the statutory requirements of the Conveyancing Act 1919.

18. Sydney Water Compliance Certification

The Applicant shall submit a Section 73 Compliance Certificate under the Sydney Water Act 1994 issued by Sydney Water Corporation. Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au <<http://www.sydneywater.com.au>> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and fees to be paid. Please make early contact with the coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

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

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

19. Subdivision Certificate Application

The Applicant shall submit a Subdivision Certificate Application to Council, which is to include a completed Subdivision Certificate form and checklist, a final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919, the final plan of subdivision and all relevant documents including electronic copies. This documentation is to be submitted to Council prior to the issue of the Subdivision Certificate. All plans of survey are to show connections to at least two Survey Co-ordination Permanent Marks. The fee payable is to be in accordance with Council's fees and charges.

Reason: Statutory requirement of the Conveyancing Act 1919.

20. Easement for Drainage

The Applicant shall create an easement for drainage (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision, to accompany the Section 88B instrument to ensure all drainage infrastructure is located within the appropriate easement(s). Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: Council's Subdivision standards and statutory requirements of the Conveyancing Act 1919.

21. **Title Encumbrances**

The Applicant shall ensure all easements, rights of carriageway, positive covenants and restrictions as to user as detailed on the plans and required by the development consent are to be created on the title naming Council as the sole authority empowered to release or modify.

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

Reason: To ensure proper management of land.

ITEM 3.2	DA2023/1269 - 161 A SEAFORTH CRESCENT SEAFORTH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SPA POOL
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PURPOSE

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

RECOMMENDATION

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 & Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2023/1269 for Alterations and additions to a dwelling house including a spa pool on land at Lot 3 DP 212783, 161 A Seaforth Crescent SEAFORTH, subject to the conditions set out in the Assessment Report.

REPORTING MANAGER	Rodney Piggott
TRIM FILE REF	2024/081037
ATTACHMENTS	1 ↓Assessment Report 2 ↓Site Plan and Elevations 3 ↓Clause 4.6

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/1269
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Responsible Officer:	Clare Costanzo
Land to be developed (Address):	Lot 3 DP 212783, 161 A Seaforth Crescent SEAFORTH NSW 2092
Proposed Development:	Alterations and additions to a dwelling house including a spa pool
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Claudette Sarah Erin Sloman
Applicant:	Megan Janet McGlinchey

Application Lodged:	29/09/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	04/10/2023 to 18/10/2023
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 6% 4.4 Floor space ratio: 18%
Recommendation:	Approval

Estimated Cost of Works:	\$ 1,540,000.00
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EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a dwelling including a spa pool.

The application is referred to the Development Determination Panel (DDP) due to an 18% non-compliance with 4.4 Floor Space Ratio of the Manly Local Environmental Plan 2013.

Concerns raised in the objections predominantly relate to excavation and construction works. These have been addressed within the assessment report.

Critical assessment issues included floor space ratio and building height.

The 4.6 request for the non-compliance with FSR standard arises from additional floor area created through excavation of the existing lower level, additional extension to the existing garage and a new upper level. The additional floorspace does not unreasonably increase the bulk or scale of the building.

There is also a 4.6 request for the non-compliance with height. Although this is less than a 10% departure, however the non compliance standard arises from alterations and additions to the existing non compliant building.

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

PROPOSED DEVELOPMENT IN DETAIL

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

- Alterations and additions to existing house at all levels including new windows, lift and stairs, balconies, roof structure, spa and garage
- Construction of a new first floor level parents retreat over an enlarged garage space

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Local Environmental Plan 2013 - 6.2 Earthworks
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

SITE DESCRIPTION

Property Description:	Lot 3 DP 212783 , 161 A Seaforth Crescent SEAFORTH NSW 2092
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the western side of Seaforth Crescent, Seaforth.</p> <p>The site is irregular in shape with an access handle that has a frontage of 1.58m to Seaforth Street. The site has a surveyed area of 812.5m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a 1 to 3 storey rendered residence with a tile roof. Vehicular access is available to the site via a concrete driveway that is a shared right of carriageway for access to 161, 161B and 161B Seaforth Crescent to an attached garage. There is an existing in ground swimming pool within the rear of the site.</p> <p>The site is on the low side of Seaforth Crescent and slopes steeply towards the north west. The entry level to the dwelling is approximately 9.5m below street level.</p> <p>There are wide views towards Middle Harbour spanning from the northern corner of the site through to the western corner.</p> <p>The predominant natural landscape elements are large endemic gums, sandstone rock platforms and faces. Residential gardens are generally planted around the natural landscape, incorporating a combination of endemic and introduced species.</p> <p>The site is located within the foreshore scenic protection area.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by dwelling houses with a variety of architectural styles.</p>

Map:



SITE HISTORY

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

- Development Application No. 497/01 for alterations and additions to dwelling was approved under delegation by Manly Council on the 31st January 2002.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended and additional Clause 4.6 written request to vary a development standard.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in	See discussion on "Notification & Submissions Received" in this report.

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 04/10/2023 to 18/10/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Mr Kenneth Walter Humphries	161 C Seaforth Crescent SEAFORTH NSW 2092

The following issues were raised in the submissions:

- Excavation
- Construction Access

The above issues are addressed as follows:

- **Excavation**

The submissions raised concerns that the excavation works required for the construction of the alterations and additions could result in damage.

Comment:

The application and geotechnical report (prepared by JKGeotechnics dated 14 July 2023) have been reviewed by Council's Development Engineer who is supportive of the works subject to recommended conditions of consent. One of the conditions of consent requires the applicant to incorporate geotechnical report recommendations into designs and structural plans. In addition, a condition requiring a pre and post dilapidation report for 161C Seaforth Crescent will be included as part of the consent.

- **Construction Access**

The submissions raised concerns regarding the vehicle access driveway providing access to 161A, 161B and 161C being blocked, used for storage or obstructed at any time during the construction works.

Comment:

Council acknowledges the concerns regarding access, especially given the multiple properties that the access driveway services. A condition of consent has been recommended as part of the development consent to ensure traffic movement in both directions on public roads and vehicular access to private properties is to be maintained at all times during the works.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The application seeks consent for alterations and additions to a dwelling house including a spa pool.</p> <p>The plans indicate that 2 small trees are to be removed to accommodate the proposed works. 4 other trees marked on the plans are to be retained.</p> <p>A small area of rock outcropping is proposed for removal to accommodate the new garage and building above. Comments from the AHO are noted, however site visit may wish to assess if the rock has any significance.</p> <p>No objections are raised with regard to landscape issues subject to conditions.</p>
NECC (Bushland and Biodiversity)	<p>The proposal seeks approval for alterations and additions to a dwelling house including a spa pool.</p> <p>The comments in this referral relate to the following applicable controls and provisions:</p> <ul style="list-style-type: none"> • SEPP (Resilience and Hazards) 2021 - Coastal Environment Area • Manly LEP - Clause 6.5 Terrestrial Biodiversity <p>The proposal would take place in a heavily disturbed site and is unlikely to impact upon native flora and fauna. Two exotic trees are being proposed for removal. Desktop surveys have revealed these to be deciduous and therefore no objections are raised in relation to their removal.</p> <p>No native vegetation or fauna habitat would be impacted, the development is designed, sited and will be managed to avoid any significant adverse environmental impact.</p>

Internal Referral Body	Comments
NECC (Coast and Catchments)	<p>The application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, State Environmental Planning Policy (Resilience & Hazards) 2021, Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity & Conservation) 2021 and Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005. It has also been assessed against requirements of the Manly LEP and DCP.</p> <p>Coastal Management Act 2016</p> <p>The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p>State Environmental Planning Policy (Resilience & Hazards) 2021</p> <p>The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA. Clauses 2.10 (coastal environment area) and 2.11 (coastal use area) do not apply as the site is also located within the Sydney Harbour catchment area. Hence, only Clause 2.12 of the SEPP R & H apply for this DA.</p> <p>Comment:</p> <p>On internal assessment, the DA satisfies requirements under clause 2.12 of the SEPP R&H. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021.</p> <p>Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity & Conservation) 2021</p> <p>Foreshores & Waterways Area</p>

Internal Referral Body	Comments
	<p>The subject site is located within the Sydney Harbour Catchment and is identified as being within the Foreshores and Waterways Area. Hence Part 6.3 of the Schedule 1 of the State Environmental Planning Policy Amendments (Water Catchments) 2022 amending the State Environmental Planning Policy (Biodiversity & Conservation) 2021 will apply in assessing this DA. Development consent, among others, must consider clause 6.28.</p> <p>On internal assessment, it is determined that the relevant clauses of the Part 6.3 including the clause 6.28 have been followed.</p> <p>Manly LEP 2013 and Manly DCP</p> <p>Foreshores Scenic Protection Area Management The subject site is also shown to be as "Manly Foreshores Scenic Protection Area" on Council's Foreshores Scenic Protection Area in Manly LEP 2013. As such, Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013 will apply to proposed development on the site.</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Megan McGlinchey Architect dated 27 September 2023, the DA satisfies requirements under Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013.</p> <p>As such, it is considered that the application does comply with the requirements of the Clause 6.9 (Foreshores Scenic Protection Area) of the Manly LEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the Manly DCP 2013.</p>
NECC (Development Engineering)	The proposed development is a low level property. The site benefits from a drainage easement to a waterbody. A geotechnical report has been provided. I have no objections to the proposed development.
External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of

External Referral Body	Comments
	Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	<p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A483927 dated 9 September 2023).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Biodiversity and Conservation) 2021

Chapter 6 – Water catchments

The subject property is located within the Sydney Harbour Catchment and Sydney Harbour Foreshores and Waterways Area therefore the provisions of Chapter 6 Water catchments of *State Environmental Planning Policy (Biodiversity and Conservation) 2021* apply to this development. Accordingly, an assessment under Chapter 6 has been carried out as follows:

Part 6.2 Development in regulated catchments - Division 2 Controls on development generally

6.6 Water quality and quantity

(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the following—

- (a) whether the development will have a neutral or beneficial effect on the quality of water entering a waterway,*
- (b) whether the development will have an adverse impact on water flow in a natural waterbody,*
- (c) whether the development will increase the amount of stormwater run-off from a site,*
- (d) whether the development will incorporate on-site stormwater retention, infiltration or reuse,*
- (e) the impact of the development on the level and quality of the water table,*
- (f) the cumulative environmental impact of the development on the regulated catchment,*
- (g) whether the development makes adequate provision to protect the quality and quantity of ground water.*

(2) Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied the development ensures—

- (a) the effect on the quality of water entering a natural waterbody will be as close as possible to neutral or beneficial, and*
- (b) the impact on water flow in a natural waterbody will be minimised.*

Comment:

The proposal has been reviewed by Council's Coastal Officer, Development Engineer and Bushland & Biodiversity Officer who have raised no objection to the works and their impacts to the adjoining waterway (subject to conditions).

6.8 Flooding

(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the likely impact of the development on periodic flooding that benefits wetlands and other riverine ecosystems.

(2) Development consent must not be granted to development on flood liable land in a regulated catchment unless the consent authority is satisfied the development will not—

(a) if there is a flood, result in a release of pollutants that may have an adverse impact on the water quality of a natural waterbody, or

(b) have an adverse impact on the natural recession of floodwaters into wetlands and other riverine ecosystems

Comment:

The site is not located within a flood prone area.

6.9 Recreation and public access

(1) In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider—

(a) the likely impact of the development on recreational land uses in the regulated catchment, and

(b) whether the development will maintain or improve public access to and around foreshores without adverse impact on natural waterbodies, watercourses, wetlands or riparian vegetation.

(2) Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied of the following—

(a) the development will maintain or improve public access to and from natural waterbodies for recreational purposes, including fishing, swimming and boating, without adverse impact on natural waterbodies, watercourses, wetlands or riparian vegetation,

(b) new or existing points of public access between natural waterbodies and the site of the development will be stable and safe,

(c) if land forming part of the foreshore of a natural waterbody will be made available for public access as a result of the development but is not in public ownership—public access to and use of the land will be safeguarded.

Comment:

The development is not expected to have any impacts on access.

6.10 Total catchment management

In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consult with the council of each adjacent or downstream local government area on which the development is likely to have an adverse environmental impact.

Comment:

The proposal has been reviewed by Council's Coastal Officer and Bushland & Biodiversity Officer who have raised no objection to the works and their impacts to the surrounding natural

environment. Based on the expert advice provided and conditions imposed, the proposed works are not considered to have an adverse environmental impact. As such consultation with adjoining local government areas was not undertaken in this instance.

Division 3 Controls on development in specific areas

6.11 Land within 100m of natural waterbody

In deciding whether to grant development consent to development on land within 100m of a natural waterbody in a regulated catchment, the consent authority must consider whether—

- (a) the land uses proposed for land abutting the natural waterbody are water-dependent uses, and*
- (b) conflicts between land uses are minimised.*

Comment:

The proposed works will meet these requirements.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

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

Comment:

The consent authority has considered the above and is satisfied the development is not likely to have

any adverse impacts.

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

Comment:

The consent authority is satisfied the development has been designed, sited and will be managed to avoid adverse impacts as detailed above.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

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

Comment:

The consent authority has considered the above and is satisfied the development is not likely to have any adverse impacts and the consent authority is satisfied the development has been designed, sited and will be managed to avoid adverse impacts as detailed above.

Division 5 General

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

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

Comment:

The development is not likely to cause increased risk of coastal hazards or other land.

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

Chapter 4 – Remediation of Land

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9m (maximum)	6%	No
Floor Space Ratio	FSR: 0.4:1 (325m ²)	FSR: 0.49:1 (396.5m ²)	18%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes

Clause	Compliance with Requirements
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Clause 4.3 Height of Building of the Manly Local Environmental Plan 2103

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9m
Percentage variation to requirement:	6%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act (cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*

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

The applicants written request argues, in part:

- The main breach occurs due to the overhang of the eaves of the first floor addition above the garage which overhangs down to the existing excavated lower level of the original 3 storey dwelling. The rear façade of the addition would be compliant with the development standard. The eaves are a minor element of the design and does not result in any unreasonable visual impact as a result of the non-compliance. See *Figure 1* for further detail.
- The change of the roof form to the 3 storey portion of the dwelling will see, on balance, a reduction in height. The roof form over the upper level balcony represents a 200mm variation and considered minor given the bulk of the overall reduction in height.
- When extrapolating a height plane from surveyed natural levels the proposal is compliant with the 8.5m height standard. The scale is consistent with development in this area which steps down the slope towards the Harbour.
- The garage first floor addition will be two storeys which is anticipated within the DCP. The original dwelling scale is to be retained.
- The breach does not raise any unreasonable amenity impacts with regard to overshadowing, privacy and view loss. The additional overshadowing is minor and does not result in any unreasonable impacts. No privacy impacts occurs as a result of the offending eaves breaching the height standard. No views loss occurs as a result either.

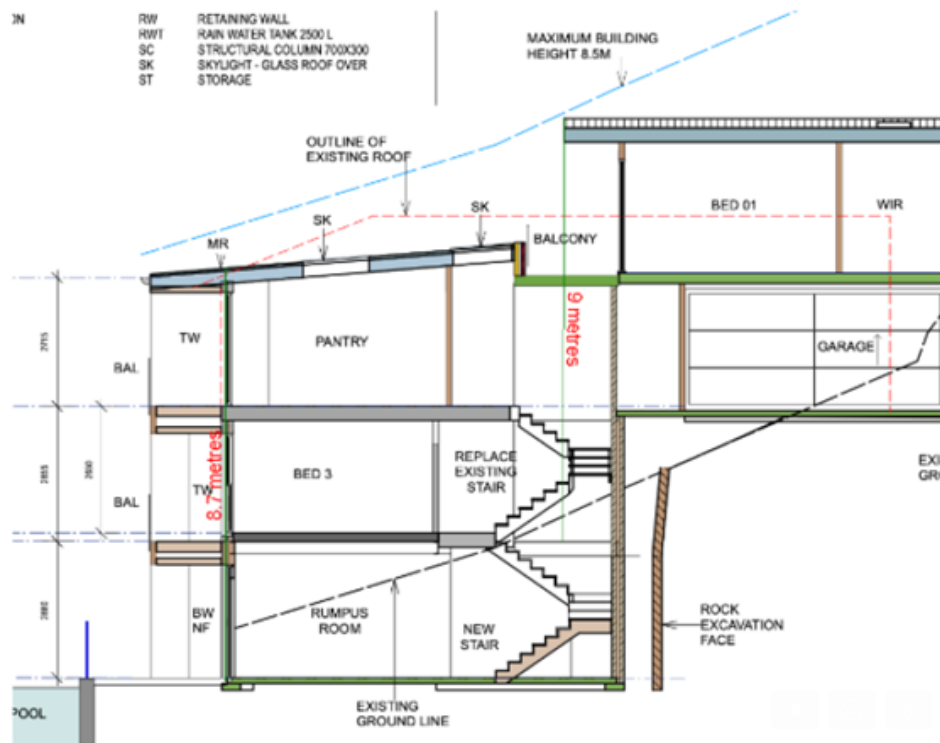


Figure 1: Section taken of the alterations and additions showing the building height non compliances

It is considered that the breach of the height of buildings control is a result of the existing excavation on site and is limited to the alterations and additions within the existing building envelope and footprint. Council agrees with the applicants argument and supports the stepping of the dwelling with the topography of the site. In addition, the proposed new upper storey readily complies with the maximum building height and is considered to be consistent with the objectives of the control.

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

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

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

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

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

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

is proposed to be carried out

Comment:

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

Objectives of development standard

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

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

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

Comment:

The breach occurs as a result of the alterations and additions to the existing dwelling. The breach occurs to the top of the eave of the proposed first floor level above the garage. It overhangs over the existing excavated lower level of the original dwelling however would be compliant when extrapolating a ground level from surveyed natural levels which reflects its appropriateness within the locality. No streetscape impacts will occur as it is a battleaxe block without direct street frontage.

b) to control the bulk and scale of buildings,

Comment:

The breach of height relates to the alterations and additions to the existing dwelling that is non compliant with the building height and relates to a new roof. It is not considered observers would find the proposed development by virtue of its bulk and scale offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the sites visual catchment. The change in roof form to the existing 3 storey section of the development will be largely a reduction in height and scale.

c) to minimise disruption to the following:

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

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

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

Comment:

It is not expected that any views are impacted as a result of the area of non-compliance.

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

Comment:

The proposal is not expected to have any unreasonable impact on access to adequate sunlight for the subject site and adjoining sites.

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

Comment:

The works do not significantly change the visual relationship of the dwelling and the existing character of the area. The envelope of the building as it is seen from the Harbour is largely consistent with the existing dwelling. The addition of a level above the garage creates a 2 storey element which does not give rise to any unreasonable impacts on the character of the area and consistent with the number of storeys for low density residential developments.

Zone objectives

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

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

Comment:

The development relates to alterations and additions to a single dwelling which maintains the existing use, that being low density residential housing, which will provide for the housing needs of the community.

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

Comment:

The proposal does not include proposed land uses other than residential. As above, the proposal relates to alterations and additions to a single dwelling, which will provide for the housing needs of the community.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of Clause 4.3 Height of buildings and the objectives of the R2 Low Density Residential zone.

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

Exception to Development Standards conclusion

The submitted written Clause 4.6 variation request is considered to be well founded having regard to the circumstances of the development is considered appropriate that flexibility in the application of the height of buildings development standard be applied. In this context the proposal meets the Objects of the Environmental Planning and Assessment Act 1979, contained in Section 1.3, having considered the relevant provisions under s.4.15 of the Act. Consequently, the development is considered to be in the public interest, subject to conditions.

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

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

Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the delegate of Council as the development contravenes a numerical standard by less than or equal to 10%.

However, as will be detailed in the next section, this application also includes a greater than 10% breach of the floor space ratio development standard. Nonetheless, Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. As will be demonstrated in the following section, given the consistency of the variation to the objectives of the zone, and in accordance with correspondence from the Deputy Secretary on 2 November 2021, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Floor space ratio Development Standard associated with a single dwelling house (Class 1 building).

Clause 4.4 Floor Space Ratio of the Manly Local Environmental Plan 2103

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.4:1 (325sqm)
Proposed:	0.49:1 (396.5sqm)
Percentage variation to requirement:	18%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

(2) *Development consent may, subject to this clause, be granted for development even though the*

development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Comment:

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

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's

written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- The additional floor space within the existing dwelling is confined within the envelope and does not contribute to additional bulk and scale despite the increase in floor space. The additional floor space within the envelope of the existing dwelling relates to converting the existing subfloor area at Level 0 to a rumpus room and the creation of a new internal stair connection and lift. None of the additional floor space within the existing dwelling contributes to additional bulk and scale. It will sit within the existing envelope and not present any unreasonable visual impacts when viewed from adjoining dwellings or the public domain. As shown in Figure 2 below.
- The existing 3 storey built form is maintained and as mentioned, the existing subfloor areas to be converted to habitable space. The overall 3 storey scale is not significantly altered by virtue of the subfloor being converted to floor space. Furthermore, the proposed change to the roof form from a pitched roof to a skillion roof achieves a reduction in height which will be a positive outcome with regard to bulk and scale. With the reduction in height and maintenance of its 3 storey form speaks to strict compliance with the standard being unnecessary in this instance.
- We note that the bulk and scale, as seen from the Harbour and foreshore area, will be reduced with the demolition of the upper level balcony with pergola and the change in roof form which drops the height. The more visible addition above the garage is setback from the rear alignment of the dwelling which will achieve a minimisation of its bulk and scale when viewed

- from Harbour and foreshore. The steep slope ensures the first floor addition above the garage will not be discernible from the Harbour and foreshore area.
- The dwelling that adjoins the rear at No. 161C will not experience any unreasonable bulk and scale issues either due to the slope of the land. The first floor above the garage will not be readily discernible. The refinements of the rear facade to remove the balcony and pergola is seen as a positive outcome with regard to visual bulk coupled with the change in roof form which has reduced the overall height.
 - The additional visible bulk is associated with the enlargement of the garage with a new level above. This will achieve a 2 storey form for this section of the dwelling and is consistent with the height development standard. There are no adverse amenity impacts associated with the additional floor space with regard to views, privacy, or solar access.
 - The additional level above the garage does not create any impacts on existing view corridors over the site from No. 159. No. 159 lowest point to their pool deck is RL 46.4 and the top of the new addition above the garage is at RL43.4. Views will still be achieved over the dwelling notwithstanding that the garage is located adjacent to the southern side boundary and views will be unaffected along the northern side of the site.
 - The development does not raise any unreasonable amenity impacts with regard to overshadowing, privacy and view loss. The overshadowing outcome does not change significantly from the existing with the garage the only area contributing to additional overshadowing. The additional overshadowing is minor and does not result in any unreasonable impacts. No unreasonable privacy impacts are anticipated with the privacy attenuation measures provided to mitigate overlooking concerns.

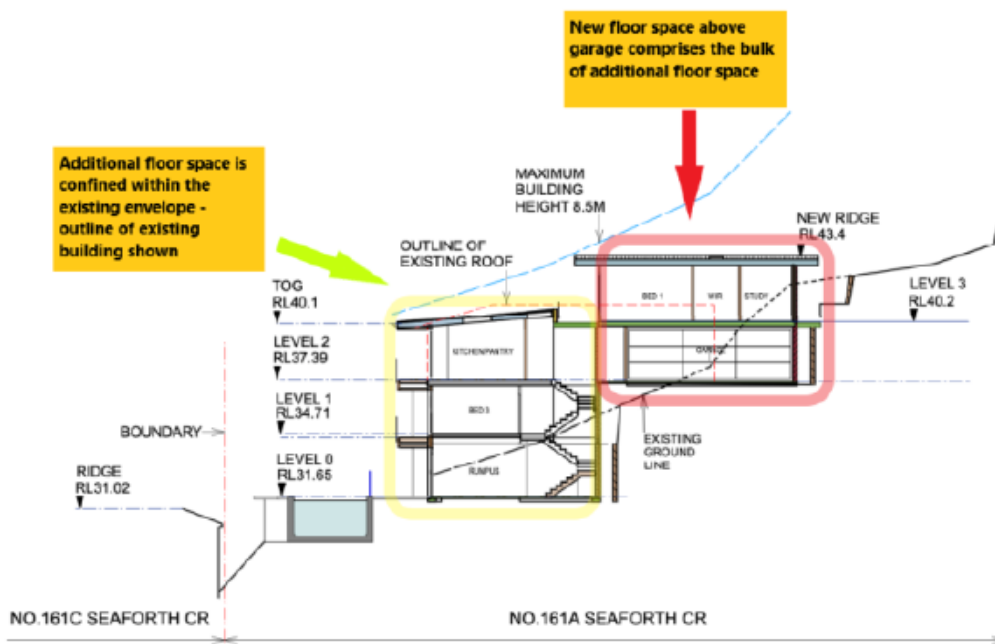


Figure 2: Section exert from the applicants Clause 4.6 written request to vary a development standard.

The applicant argues that the additional floor space does not unreasonably increase the bulk and scale of the dwelling given the location of the new floor space within the existing building envelope and the modest size and compliant building height of the new upper level addition that is located towards the south east of the site to minimise visual impact. The additional upper storey is located above the

garage, which is partly excavated and as such the bulk and scale of the dwelling is significantly reduced when viewed from adjoining sites. The dwelling will appear as two storeys upon entry to the site and when viewed from surrounding sites it has been stepped with the topography of the site to reduce bulk and scale.

A small portion of the floor space area can be attributed to the additional car parking space located within the garage. By definition this area is included in the floor space calculation. Given the steep sloping and difficult access to the site it is considered acceptable and reasonable for the applicant to provide an additional on site car parking space within the garage. This additional area does not result in an unreasonable bulk and scale to the dwelling and has been constructed to complement the sloping topography of the site.

Council are in agreeance with the applicant that there are sufficient environmental planning grounds, particularly as it is not likely to be any privacy, solar access, view or amenity impacts as a result of the works.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

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

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

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

Comment:

The site is a battle-axe allotment and therefore is not visible from the streetscape. Nonetheless, the application has been stepped with the sloping topography and would have the appearance of a modest two storey dwelling if it were visible from the streetscape. This objective is achieved as the bulk and scale of development is entirely consistent with the existing and desired streetscape character.

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

Comment:

The proposal does not result in any obstruction of important landscape or townscape features. The development will generally be sited in line with and below the existing canopy and is not expected to obscure any views.

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

Comment:

The works do not significantly change the visual relationship of the dwelling and the existing character of the area. The envelope of the building as it is seen from the Harbour is largely consistent with the existing dwelling. The addition of a level above the garage creates a 2 storey element which does not give rise to any unreasonable impacts on the character of the area. In addition, the site readily meets the minimum landscaped area control and does not propose the removal of any significant vegetation.

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

Comment:

The works would not result in any impact on the use or enjoyment of adjoining land and the public domain. The proposal maintains appropriate levels of amenity with regard to view loss, overshadowing and privacy despite the floor space ratio variation.

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

Comment:

Not applicable.

Zone objectives

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

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

Comment:

The development relates to alterations and additions to a single dwelling which maintains the existing use, that being low density residential housing, which will provide for the housing

needs of the community.

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

Comment:

The proposal does not include proposed land uses other than residential. As above, the proposal relates to alterations and additions to a single dwelling, which will provide for the housing needs of the community.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of Clause 4.4 Floor Space Ratio and the objectives of the R2 Low Density Residential zone.

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

Exception to Development Standards conclusion

The submitted written Clause 4.6 variation request is considered to be well founded having regard to the circumstances of the development and it is therefore considered appropriate that in this instance, flexibility in the application of the floor space ratio development standard be applied. In this context the proposal meets the Objects of the Environmental Planning and Assessment Act 1979, contained in Section 1.3, having considered the relevant provisions under s.4.15 of the Act. Consequently, the development is considered to be in the public interest, subject to conditions.

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

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

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

6.2 Earthworks

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

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

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

following matters:

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

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

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

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

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

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

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

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

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

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

(f) the likelihood of disturbing relics

Comment:

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

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

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

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

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

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

6.9 Foreshore scenic protection area

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

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

Comment:

The proposal is not expected to have any adverse impacts on the scenic quality of the foreshore. The additional building height will generally be sited below the canopy and the trees proposed for removal will be replaced with new plantings.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 812.5m ²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	NE: 8m (based on gradient 1:4+)	8.2m	2.5%	No
	SW: 8m (based on gradient 1:4+)	8.2m	2.5%	No
4.1.2.2 Number of Storeys	2	3	33%	No
4.1.2.3 Roof Height	Height: 2.5m	1m	N/A	Yes
	Parapet Height: 0.6m	0.3m	N/A	Yes
	Pitch: maximum 35 degrees	<35 degrees	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	2.7m (based on wall height)	NE: 0.9m SE: 7.1m SW: 1.4m	66% N/A 48%	No Yes No
	Windows: 3m	>3m	53-70%	No
4.1.4.4 Rear Setbacks	8m	7.5m	6%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area	57% (460.9m ²)	5%	No
	Open space above ground 25% of total open space	17.5% (81m ²)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space	65% (288.5m ²)	N/A	Yes
	4 native trees	<4 trees	N/A	Yes
4.1.5.3 Private Open Space	18sqm	>18sqm	N/A	Yes

4.1.6 Parking, Vehicular Access and loading	Garage width maximum 6.2m	8.1m	23.5%	No
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	0m	N/A	Yes
	1m curtilage/1.5m water side/rear setback	3.1m (new spa)	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	3 spaces	N/A	Yes

Compliance Assessment

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

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

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

Description of non-compliance

The proposal does not comply with the maximum wall height control and height of building control under the MLEP. Assessment of the building height beach is conducted earlier in this report under 4.6 Exemptions to development standards.

The proposed wall height on both the north eastern and south western elevation is 8.2m which is a 0.2m or 2.5% non compliance to the control requiring 8m maximum.

The proposal comprises of an additional storey which will make the dwelling a total of 3 storeys, which is a 33% non compliance to the control limiting the number of storeys to 2. Given the steep sloping topography of the area within Seaforth it is not unusual for sites to have more than two storeys. The lowest level of the dwelling is classified a basement according to the MLEP and is therefore not counted as a level, as such the dwelling is only technically 3 storeys.

It is worth noting the existing dwelling does not comply with the wall height control and therefore strict compliance with the control is limited. It is also important to note that the proposed additional storey complies with the building height. and wall height.

Merit consideration

There are no underlying objectives of this control under which to consider the merits of this variation. This clause instead relies on the objectives for the Height of Buildings at clause 4.3 in the Manly LEP 2013. An assessment against these objectives regarding the wall heights is as follows:

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

Comment:

The proposed non compliance is a result of alterations and additions to an already non compliant dwelling. The works will continue to be compatible with the topographic landscape, prevailing building height and desired streetscape character.

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

Comment:

The proposal has been stepped with the topography of the land and therefore the perceived bulk and scale of the dwelling is reduced.

- (c) to minimise disruption to the following—
- (i) views to nearby residential development from public spaces (including the harbour and foreshores),
 - (ii) views from nearby residential development to public spaces (including the harbour and foreshores),
 - (iii) views between public spaces (including the harbour and foreshores),

Comment:

The proposal is not expected to obstruct any existing view corridors.

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

Comment:

The proposal will not result in any unreasonable additional overshadowing.

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

Comment:

The proposal, particularly in the location of the breaches is sited below canopy trees.

4.1.3 Floor Space Ratio (FSR)

The proposal presents a Floor Space Ratio of 0.49:1 (396.5m²) which represents a variation of 18% to the 0.40:1 (325m²) FSR requirement.

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

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

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

Description of non-compliance

The proposal presents a non compliance to the side boundary control along the north eastern and south western side boundaries.

The works are setback 0.9m along the north eastern side boundary, which is a 1.8m or 66% non compliance to the control requiring a setback of 2.7m. The works are setback 1.4m from the south western boundary, which is a 1.3m or 48% non compliance to the control requiring a setback of 2.7m.

It is important to note that the existing building does not comply with the side boundary setbacks and

therefore any alterations and additions will result in a non compliance. The new level comprising of a new bedroom, bathroom, walk in robe, study, laundry and balcony is well setback from the north east and then follows the existing setback of the garage underneath along the south western setback.

As a result of the non compliance setbacks all new windows present a 53-70% non compliance to the control requiring all new windows to be setback 3m from side boundaries.

The proposal will follow existing rear setback of 7.5m which is a non compliance to the rear setback of 0.5m or 6% variation to the control requiring 8m.

Majority of the non compliances are existing with the exception to the new top level addition south western side boundary setback.

Merit consideration:

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

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

Comment:

The dwelling is not visible from Seaforth Crescent and therefore does not have any impacts on the streetscape.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposal is not expected to have any unreasonable impacts on privacy, solar access or view sharing and building separation. There are no changes proposed to the vehicular access to the site.

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

Comment:

Flexibility in the siting of buildings is required given the steep sloping topography of the site and the limitations of strict compliance with the setback controls given the footprint of the existing dwelling.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposal complies with the minimum required soft landscaped area.

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

Comment:

N/A - the site is not located within bushfire prone land.

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

4.1.5 Open Space and Landscaping

Description of non-compliance

The proposal comprises of 460.9m² or 57% of the total site area as open space, which is a 5% or 26.2m² variation to the minimum requirement of 60% or 487.5m².

The right of way access handle that forms part of 161A Seaforth Crescent, providing access to the subject site and adjoining sites is approximately 108.4m² of concrete paved surface that is not included by definition as open space. The length and extent of this driveway increases the site area, without any opportunities to provide any additional open space. If the access handle was removed from the site area, the total open space would be a compliant 569.3m² or 70%..

Merit consideration:

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

Objective 1) To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.

Comment:

The proposal has been reviewed by Council's Development Engineer, landscape Officer and the Aboriginal Heritage Office who are supportive of the application.

Objective 2) To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.

Comment:

The proposal complies with the soft landscaped area and will provide sufficient opportunities for future plantings.

Objective 3) To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.

Comment:

The proposal is not expected to have an adverse impact on the amenity of the site, the streetscape and surrounding area.

Objective 4) To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.

Comment:

The proposal has been reviewed by Council's Development Engineer who is supportive of the works subject to recommended conditions.

Objective 5) To minimise the spread of weeds and the degradation of private and public open space.

Comment:

The proposal is not expected to result in the spread of weeds and degradation of private and public open space.

Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.

Comment:

Wildlife corridors will be retained.

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

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

Description of non-compliance

The proposed garage is 8.1m in width, which is a 1.9m or 23.5% non compliance to the control requiring a maximum width of 6.2m. The garage has been widened as a result of this development application to accommodate for three vehicles.

Merit consideration:

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

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

Comment:

The proposal will continue to provide accessible car parking on site. The long and steep driveway to access the site makes it impractical for cars to be parked on Seaforth Crescent and as such has resulted in additional on site car parking.

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

Comment:

The proposal reduces the demand for on street car parking.

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

Comment:

The existing garage has been extended to accommodate for an additional car parking space and the existing safe access arrangements remain unchanged.

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

Comment:

The proposal only requires a small amount of excavation for the garage extension and it is not expected to have any adverse impacts on site stability or ground water flows.

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

Comment:

Existing vehicular crossing remains unchanged.

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

Comment:

The proposal complies with the minimum required soft landscaped area.

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

Comment:

N/A - the proposal is located within a residential zone.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$15,400 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,540,000.

CONCLUSION

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

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

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

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

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

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

Council is satisfied that:

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

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

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

Additionally, Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

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

PLANNING CONCLUSION

This proposal, for alterations and additions to a dwelling house including a spa pool, has been referred to the Development Determination Panel (DDP) due to an 18% non-compliance with Clause 4.4 Floor Space Ratio of the Manly Local Environmental Plan 2013, in addition to a 6% non-compliance with Clause 4.3 Height of Building of the Manly Local Environmental Plan 2013.

Concerns raised in the objections predominantly relate to excavation and construction works. These have been addressed within the assessment report.

Critical assessment issues included floor space ratio and building height. The 4.6 request for the non-compliance with FSR standard arises from additional floor area created through excavation of the existing lower level, additional extension to the existing garage and a new upper level. The additional floor space does not unreasonably increase the bulk or scale of the building. Furthermore, the height of buildings non-compliance arises from alterations and additions to the existing non-compliant building.

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

REASON FOR DETERMINATION

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

RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2023/1269 for Alterations and additions to a dwelling house including a spa pool on land at Lot 3 DP 212783, 161 A Seaforth Crescent, SEAFORTH, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA02	B	Site Plan + Site Analysis	Megan McGlinchey Architect	27 September 2023
DA03	B	Site Plan + Landscaping	Megan McGlinchey Architect	27 September 2023
DA04	B	Site Section	Megan McGlinchey Architect	27 September 2023
DA05	B	Demolition + Excavation - Level 0	Megan McGlinchey Architect	27 September 2023
DA06	B	Demolition + Excavation - Level 1 + 2	Megan McGlinchey Architect	27 September 2023
DA07	B	Plan - Level 0 (Ground)	Megan McGlinchey Architect	27 September 2023
DA08	B	Plan - Level 1	Megan McGlinchey Architect	27 September 2023

DA09	B	Plan - Level 2	Megan McGlinchey Architect	27 September 2023
DA10	B	Plan - Level 3	Megan McGlinchey Architect	27 September 2023
DA11	B	Elevation - North-west	Megan McGlinchey Architect	27 September 2023
DA12	B	Elevation - North-east	Megan McGlinchey Architect	27 September 2023
DA13	B	Elevation - South-west	Megan McGlinchey Architect	27 September 2023
DA14	B	Elevation - South-east	Megan McGlinchey Architect	27 September 2023
DA15	B	Cross Section	Megan McGlinchey Architect	27 September 2023
DA16	B	Longitudinal Section	Megan McGlinchey Architect	27 September 2023
DA18	B	External Finishes Schedule	Megan McGlinchey Architect	27 September 2023
DA19	B	Window + Door Schedule 1	Megan McGlinchey Architect	27 September 2023
DA20	B	Window + Door Schedule 2	Megan McGlinchey Architect	27 September 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Geotechnical Assessment	36096SFrp	JK Geotechnics	14 July 2023
BASIX Certificate	A483927	Megan McGlinchey	5 September 2023

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

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

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

2. **Compliance with Other Department, Authority or Service Requirements**

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	9 October 2023

Aboriginal Heritage Office	AHO	29 September 2023
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(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

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

3. Prescribed Conditions

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

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and

- (ii) where necessary, underpin the adjoining premises to prevent any such damage.
- (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

4. General Requirements

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

Demolition and excavation works are restricted to:

 - 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).
- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the following is required:
 - i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to

- legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
 - iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
 - (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
 - (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
 - (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
 - (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$15,400.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$1,540,000.00.

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

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

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

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

6. Security Bond

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE**7. No Clearing of Vegetation**

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

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

Reason: To protect native vegetation.

8. Stormwater Disposal from Low Level Property

The applicant is to demonstrate how stormwater from the new development within this consent shall be disposed of to an existing approved system or in accordance with Northern Beaches Council's Water Management for Development Policy in particular Section 5.5 Stormwater Drainage from Low Level Properties. Details demonstrating that the existing approved system can accommodate the additional flows or compliance with Northern Beaches Council's policy by an appropriately qualified Civil Engineer are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

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

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

10. **Off Street Parking Design**

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

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

Reason: Compliance with this consent.

11. **Boundary Identification Survey**

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

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

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

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

12. **Installation and Maintenance of Sediment Control**

Prior to any works commencing on site, including demolition, an erosion and sediment control plan must be prepared by a suitably qualified person in accordance with the following documents and provided to the Principal Certifier:

1. Council's relevant development control plan,
2. The guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the Blue Book) (as amended from time to time), and
3. The 'Do it Right On-Site, Soil and Water Management for the Construction Industry' (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust) (as amended from time to time).

Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To ensure no substance other than rainwater enters the stormwater system and waterways.

13. **Compliance with Standards**

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

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

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

14. **Sydney Water "Tap In"**

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

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

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

15. **Pre-Construction Dilapidation Report**

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifier prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Property / Properties: 161C Seaforth Crescent, Seaforth

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifier and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifier must be satisfied that the requirements of this condition have been met prior to commencement of any works. If access is denied, then no dilapidation report is required.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

DURING BUILDING WORK

16. Protection of Rock and Sites of Significance

All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.

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

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

Reason: Preservation of significant environmental features.

17. Tree and Vegetation Protection

- a) Existing trees and vegetation shall be retained and protected, including:
 - i) all trees within the site not indicated for removal on the approved plans, including trees and vegetation nominated for retention on the approved Plans,
 - ii) all trees and vegetation located on adjoining properties,
 - iii) all trees and vegetation within the road reserve.
- b) Tree protection shall be undertaken as follows:
 - i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
 - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
 - v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
 - vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
 - vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
 - viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures

- specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
- ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
 - x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
 - xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

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

Reason: Tree and vegetation protection.

18. Wildlife Protection

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

Reason: To protect native wildlife.

19. Protection of Habitat Features

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

Reason: To protect wildlife habitat.

20. Road Reserve

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

Reason: Public safety.

21. Geotechnical Requirements

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

Reason: To ensure geotechnical risk is mitigated appropriately.

22. Survey Certificate

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

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

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

23. Property Boundary Levels

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

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

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

24. Traffic Control During Road Works

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

Reason: Public Safety.

25. Waste Management During Development

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

26. Required Tree Planting

Trees shall be planted in accordance with the following:

- a) A minimum of four (4) locally native tree(s) shall be planted within the property to achieve at least five (5) metres height at maturity, and in accordance with the following:
 - i) tree planting shall be a minimum pre-ordered planting size of 75 litres; generally selected from Northern Beaches Council's Native Plant Species Guide, or Council's Tree Guide; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
 - ii) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces,

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

Reason: To maintain environmental amenity.

27. No Weeds Imported On To The Site

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

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

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

28. Stormwater Disposal

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

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

29. Post-Construction Dilapidation Report

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

- Compare the post-construction report with the pre-construction report,
- Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

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

Reason: To maintain proper records in relation to the proposed development.

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

30. Geotechnical Recommendations

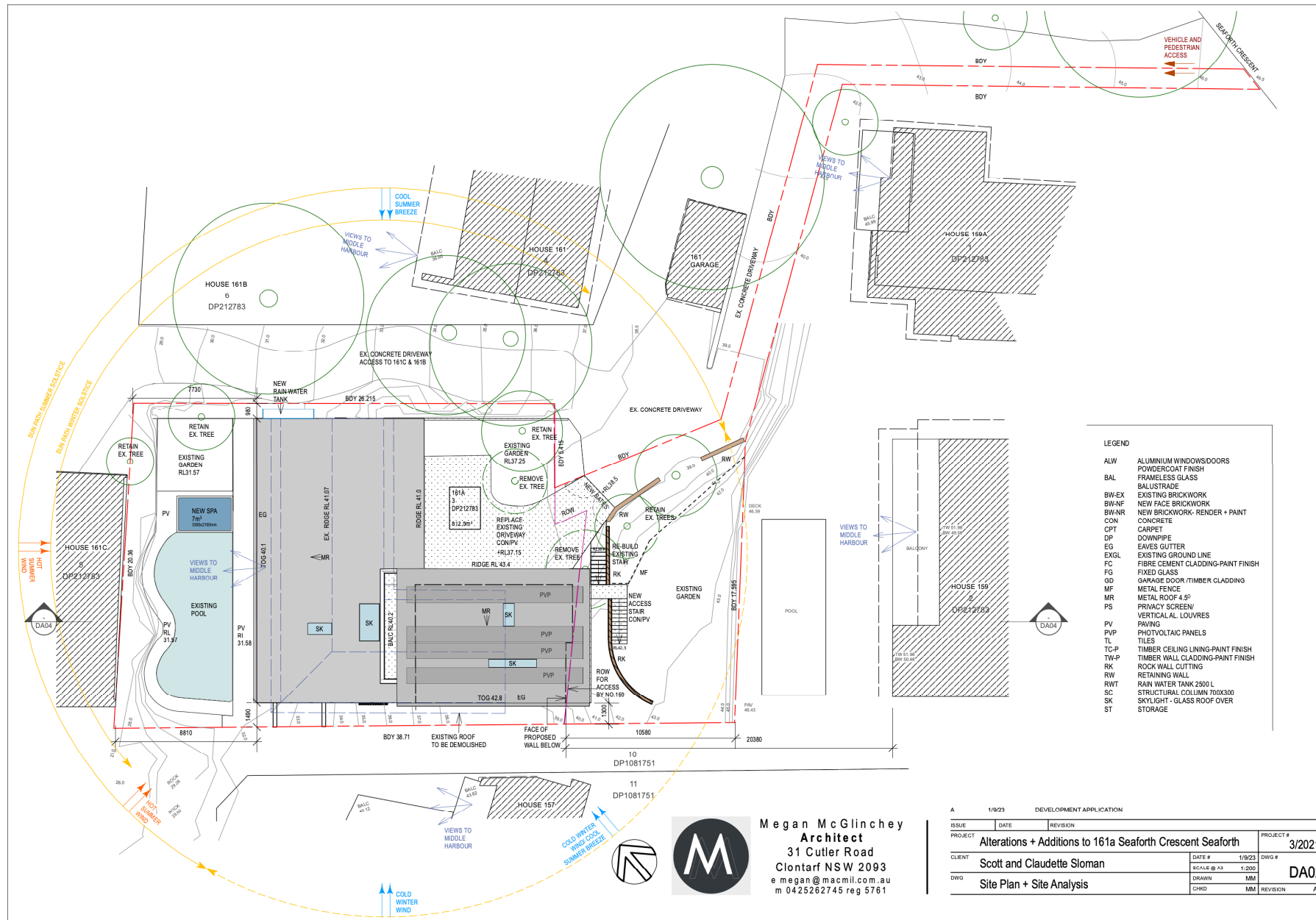
Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

31. Swimming Pool/Spa Motor Noise

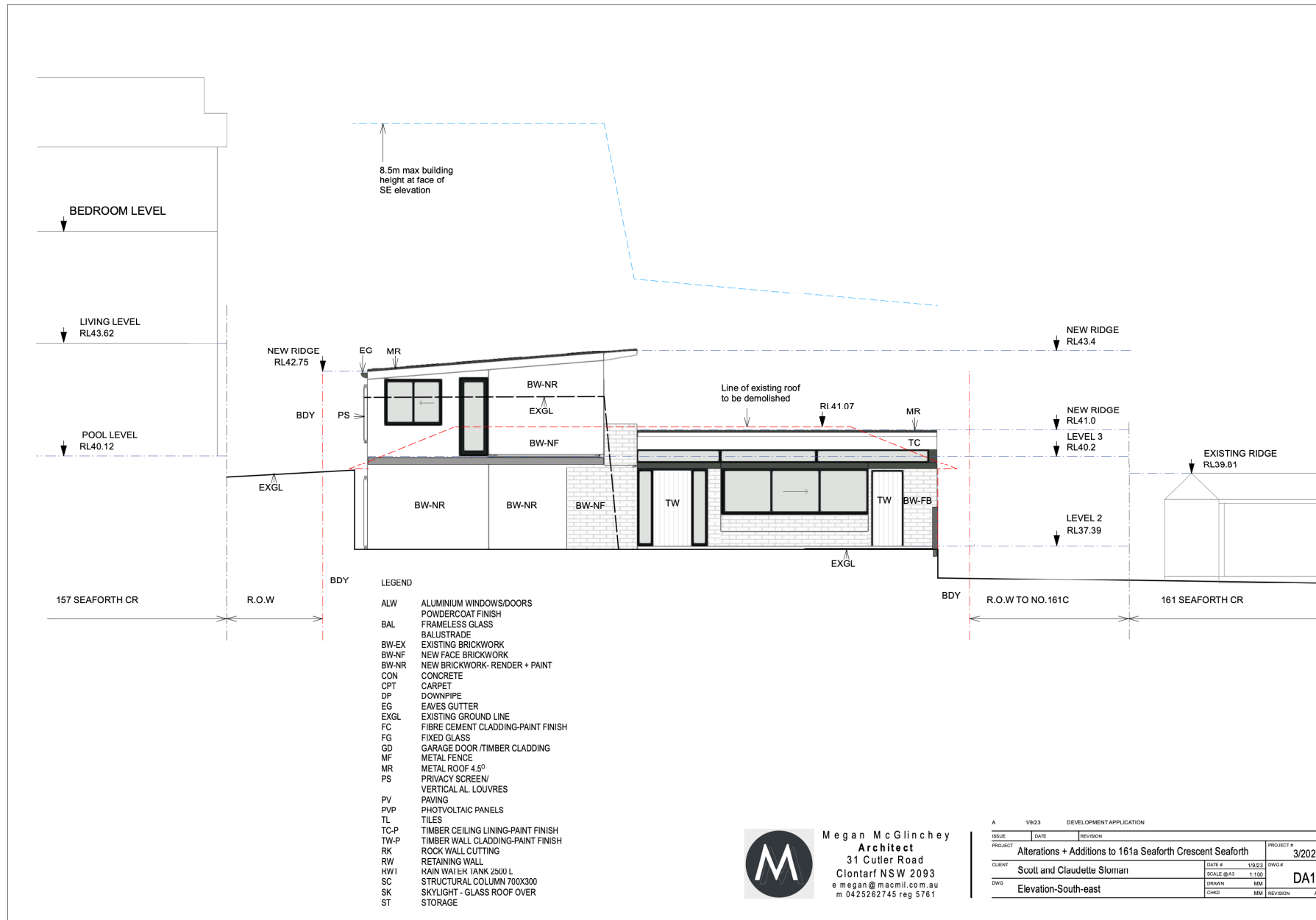
The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

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



A		1/9/23		DEVELOPMENT APPLICATION	
ISSUE	DATE	REVISION		PROJECT #	
PROJECT	Alterations + Additions to 161a Seaforth Crescent Seaforth			3/2021	
CLIENT	Scott and Claudette Sloman		DATE #	1/9/23	DWG #
			SCALE @ A3		1:100
DWG	Elevation-North-east		DRAWN	MM	DA12
			CHKD	MM	
				REVISION	A

A		1/9/23		DEVELOPMENT APPLICATION		
ISSUE		DATE		REVISION		
PROJECT		Alterations + Additions to 161a Seaforth Crescent Seaforth				PROJECT #
CLIENT		Scott and Claudette Sloman				3/2021
DWG		Elevation-South-west		DATE #	1/9/23	DWG #
				SCALE @ A3		1:100
				DRAWN		MM
				CHKD		MM REVISION
						A





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RE: CLAUSE 4.6 REQUEST TO VARY THE HEIGHT OF BUILDINGS
161a Seaforth Crescent, Seaforth

1.0 Introduction

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

2.0 Manly Local Environmental Plan 2013 (“MLEP”)

2.1 Clause 4.3 – Height of Buildings

Pursuant to Clause 4.3 of Manly Local Environmental Plan 2013 (MLEP) the height of buildings control applicable to the site is 8.5m. The objectives of this control are as follows:

- (a) *to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
- (b) *to control the bulk and scale of buildings,*
- (c) *to minimise disruption to the following—*
 - (i) *views to nearby residential development from public spaces (including the harbour and foreshores),*
 - (ii) *views from nearby residential development to public spaces (including the harbour and foreshores),*
 - (iii) *views between public spaces (including the harbour and foreshores),*
- (c) *to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*

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

The building height to the first floor addition to the garage is measured at 9m which is a variation of 500mm or 5.28%.

The works to the 3 storey section of the dwelling is measured at 8.7m which is a variation of 200mm or 2.35%.

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of MLEP provides:

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

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

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

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

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

Clause 4.6(2) of MLEP provides:

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument.*

However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

This clause applies to the clause 4.3 height of buildings Development Standard.

Clause 4.6(3) of MLEP provides:

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

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

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

The proposed development does not comply with the building height provision at 4.3 of MLEP which specifies a maximum building height however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

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

Clause 4.6(4) of MLEP provides:

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

(a) the consent authority is satisfied that:

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

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

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

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

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

Under cl 64 of the *Environmental Planning and Assessment Regulation* 2021, the Secretary has given written notice dated 5 May 2020, attached to the Planning Circular PS 20-002, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of MLEP provides:

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

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

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

3.0 Relevant Case Law

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

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

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

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

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

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

22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not*

need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

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

1. Is clause 4.3 of MLEP a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.3 and the objectives for development for in the zone?
4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.3 of MLEP?

4.0 Request for variation

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

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

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

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

Architectural section drawing showing a building layout with various rooms and structural details. The drawing includes a cross-section of a building with a sloped roof and a balcony. Key features and labels include:

- Rooms and Spaces:** TW (Terrace Wall), PANTRY, BED 3, RUMPUS ROOM, NEW STAIR, GARAGE, BED 01, WIR (Wardrobe).
- Structural Elements:** RETAINING WALL, RAIN WATER TANK 2500 L, STRUCTURAL COLUMN 700X300, SKYLIGHT - GLASS ROOF OVER STORAGE, BALCONY, ROCK EXCAVATION FACE.
- Dimensions:**
 - Maximum Building Height: 8.5m
 - Vertical dimension: 9 metres
 - Vertical dimension: 8.7 metres
 - Horizontal dimensions: 2013, 2053, 2060, 2082
- Other Labels:** OUTLINE OF EXISTING ROOF, EXISTING GROUND LINE, POOL, BAL, TV, BW NF, REPLACE EXISTING STAIR, NEW STAIR.

Image 1: Section showing the height breach when measured to the existing excavated level. The 8.5m height line is extrapolated from surveyed natural surface levels

The works to the original 3 storey section will see a reduction in height with the new roof form proposed. The breach occurs to the new roof form over the upper level balcony. The reduction in height with a flatter skillion roof is considered an improvement within the context of development within the area.

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

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

Notwithstanding, the height breach occurs to the proposed first floor addition above the garage with the 3 storey scale of the original portion of the dwelling maintained. The 2 storey nature of the garage addition is consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191 insofar that observers would not find the proposed development by virtue of its bulk and scale offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the sites visual catchment.

The change in roof form to the existing 3 storey section of the development will be largely a reduction in height and scale.

The proposal meets this objective.

(c) to minimise disruption to the following:

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

Response: No public views are impacted as a result of the offending area of non-compliance.

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

Response: The proposal has been assessed against the view sharing planning principle and determined that adverse view impacts will occur as a result of the works proposed.

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

Response: No views are impacted between public spaces.

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

Response: Shadow diagrams have been provided which demonstrate compliant levels of solar access achieved to neighbouring properties.

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

Response: N/A

The works do not significantly change the visual relationship of the dwelling and the existing character of the area. The envelope of the building as it is seen from the Harbour is largely consistent with the existing dwelling. The addition of a level above the garage creates a 2 storey element which does not give rise to any unreasonable impacts on the character of the area and consistent with the number of storeys for low density residential developments.

The dwelling would not be considered out of place within the landscape which is characterised by 2 and 3 storey dwellings that reflect the areas topography.

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

In Initial Action the Court found at [23]-[24] that:

23. As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds”

by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.

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

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

Sufficient environmental planning grounds exist to justify the building height variation. Specifically, the environmental planning grounds consist of the following:

- The main breach occurs due to the overhang of the eaves of the first floor addition above the garage which overhangs down to the existing excavated lower level of the original 3 storey dwelling. The rear façade of the addition would be compliant with the development standard. The eaves are a minor element of the design and does not result in any unreasonable visual impact as a result of the non-compliance.
- The change of the roof form to the 3 storey portion of the dwelling will see, on balance, a reduction in height. The roof form over the upper level balcony represents a 200mm variation and considered minor given the bulk of the overall reduction in height.
- When extrapolating a height plane from surveyed natural levels the proposal is compliant with the 8.5m height standard. The scale is consistent with development in this area which steps down the slope towards the Harbour

- The garage first floor addition will be two storeys which is anticipated within the DCP. The original dwelling scale is to be retained.
- The breach does not raise any unreasonable amenity impacts with regard to overshadowing, privacy and view loss. The additional overshadowing is minor and does not result in any unreasonable impacts. No privacy impacts occurs as a result of the offending eaves breaching the height standard. No views loss occurs as a result either.

I have formed the considered opinion that sufficient environmental planning grounds exist to justify the variation including the compatibility of the height, bulk and scale of the development, as reflected by building height, with the built form characteristics established by adjoining development and development generally within the site's visual catchment.

The developments compliance with the objectives of the building height standard and the general paucity of adverse environmental impact also giving weight to the acceptability of the variation sought.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposal promotes the orderly and economic use and development of land (1.3(c)).
- The development represents good design (1.3(g)).
- The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(h)).

It is noted that in *Initial Action*, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not

that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

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

4.3 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 4.3 and the objectives of the R2 Low Density Residential zone

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

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

“The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development’s consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).”

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

Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

4.3 Secretary’s concurrence

By Planning Circular dated 20 May 2020, the Secretary of the Department of Planning & Environment advised that consent authorities can assume the concurrence to clause 4.6 request except in the circumstances set out below:

- Lot size standards for rural dwellings;
- Variations exceeding 10%; and
- Variations to non-numerical development standards.

The circular also provides that concurrence can be assumed when an LPP is the consent authority where a variation exceeds 10% or is to a non-numerical standard, because of the greater scrutiny that the LPP process and determination s are subject to, compared with decisions made under delegation by Council staff.

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

5.0 Conclusion

Having regard to the clause 4.6 variation provisions we have formed the considered opinion:

- (a) that the contextually responsive development is consistent with the zone objectives, and
- (b) that the contextually responsive development is consistent with the objectives of the building height standard, and
- (c) that there are sufficient environmental planning grounds to justify contravening the development standard, and
- (d) that having regard to (a), (b) and (c) above that compliance with the building height development standard is unreasonable or unnecessary in the circumstances of the case, and
- (e) that given the developments ability to comply with the zone and building height standard objectives that approval would not be antipathetic to the public interest, and
- (f) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning; and
- (g) Concurrence of the Secretary can be assumed in this case.

Pursuant to clause 4.6(4)(a), the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

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

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

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

Yours Sincerely



William Fleming
BS, MPLAN
Boston Blyth Fleming Pty Ltd
Director

ITEM 3.3	DA2023/1736 - 7 HALESMTITH ROAD MONA VALE - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL
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PURPOSE

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

RECOMMENDATION

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of PLEP 2014 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2023/1736 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 4 DP 811588, 7 Halesmith Road MONA VALE, subject to the conditions set out in the Assessment Report.

REPORTING MANAGER	Steven Findlay
TRIM FILE REF	2024/080382
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations 3 ↓ Clause 4.6

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/1736
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Responsible Officer:	Jordan Davies
Land to be developed (Address):	Lot 4 DP 811588, 7 Halesmith Road MONA VALE NSW 2103
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Jann McDonald
Applicant:	Jann McDonald

Application Lodged:	29/11/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	06/12/2023 to 11/01/2024
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 16.7%
Recommendation:	Approval

Estimated Cost of Works:	\$ 1,310,050.00
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EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) due to the exceedance of the 8.5m building height limit, in this case a height of 9.925m or 16.7% departure from the standard.

No submissions were received during the notification period.

Critical assessment issues include the height of buildings breach, the envelope breach and the

landscape area breach. A view sharing assessment has been completed for completeness, despite no submissions being received.

The Clause 4.6 variation request for the non-compliance with the height standard arises from the site being partially excavated underneath the existing building creating a 16.7% variation for a small section of the building which is caused by the proposed lift location. Based on extrapolated natural ground levels the building would be within the 8.5m height limit. The lift is located in the optimal position to service all three floors and an alternate location would not be possible to service all three floors. The remainder of the building is within the 8.5m height.

The view sharing assessment has found that the height breach and envelope breach do not impact upon water views and view sharing is maintained for the properties across the road.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposed development seeks alterations and additions to a dwelling house and swimming pool.

Specifically, the proposal consists of:

Demolition Works

- Demolition works as depicted on drawings DA03, DA05 and DA06 of the architectural plans prepared by Action Plans.

Alterations and Additions - Lower Ground Floor

- Family room with new wine cellar, Existing bathroom to be renovated, New built-in robes for bedrooms 2 and 3, New lift and Patio extension

Alterations and Additions - Ground Floor

- New entry area, New laundry, New stairs to first floor, TV room, Linen storage, Guest bedroom with ensuite, WC, Lift, New kitchen with a butler's pantry, New Living and dining areas, Addition of BBQ area and privacy screening on existing balcony

New Addition - First Floor

- Stairs, Master bedroom with WIR, Terrace with privacy screens, Ensuite, Flex space

External Works

- New Swimming pool and spa with required fencing, Pool filter box, Rainwater tank, Resurface existing driveway and Stairs

There are no works proposed within the Foreshore Area.

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;

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

SUMMARY OF ASSESSMENT ISSUES

Assessment - SEPP (Sustainable Buildings) 2022
 Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living
 Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
 Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
 Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
 Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
 Pittwater 21 Development Control Plan - A4.9 Mona Vale Locality
 Pittwater 21 Development Control Plan - C1.3 View Sharing
 Pittwater 21 Development Control Plan - D9.3 Building colours and materials
 Pittwater 21 Development Control Plan - D9.6 Front building line
 Pittwater 21 Development Control Plan - D9.9 Building envelope
 Pittwater 21 Development Control Plan - D9.11 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 4 DP 811588 , 7 Halesmith Road MONA VALE NSW 2103
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the north-western side of Halesmith Road.</p> <p>The site is regular in shape with a frontage of 15.24m along Halesmith Road and a depth of 56.54m. The site has a surveyed area of 879.4m².</p> <p>The site is located within the C4 Environmental Living zone and accommodates a part one and two storey dwelling house.</p> <p>The site has a moderate fall from the front boundary to the rear boundary across the building footprint. The site then sharply falls away down to the Pittwater. The north-western boundary adjoins the Pittwater.</p> <p>The site has a range of low to medium height shrubs and trees. No significant vegetation or canopy trees exist on the site.</p>

	<p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by detached one and two storey dwelling houses. To the north-east and south-west are 1/2 storey dwellings, across the road to the south-east are 1 and 2 storey dwellings. Adjoining the site to the north-west is the Pittwater.</p>
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Map:



SITE HISTORY

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

Application **N0672/06** for Alterations and additions to the existing ground floor level was approved by Pittwater Council 12/01/2007.

Application **N0752/02** for Additions - extension to existing deck was approved by Pittwater Council on 25/11/2002.

Amended Plans

Amended plans were received on 26 January 2024 which included the following:

- 1) Obscure glazing to kitchen window;
- 2) Increase the amount of landscaping by changing existing pavers to grass; and
- 3) View sharing montage from 8 Halesmith Road.

The proposal was not required to be re-notified as the proposal reduced the overall impact, as per the Northern Beaches Community Consultation Plan.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Amended plans were provided, as described above. The amended plans have been assessed as part of the application.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development,	<p>(i) Environmental Impact</p> <p>The environmental impacts of the proposed development on the</p>

Section 4.15 Matters for Consideration	Comments
including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 06/12/2023 to 11/01/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulfate)	<p>General Comments</p> <p>This application is seeking consent for alterations and additions to an existing dwelling house including a swimming pool and associated works. The area for the proposed pool (excavation to 1.8m) is within Class 5 Acid Sulfate Soils. The proposed works present a low risk of the presence of Acid Sulfate Soils and the potential for generation of acid sulfate soil conditions.</p>

Internal Referral Body	Comments
	Environmental Health recommends approval subject to conditions.
Landscape Officer	<p>The proposed works include alterations and additions to an existing dwelling including a swimming pool and associated works, as described in reports and as illustrated in plans.</p> <p>A Landscape Plan and a Arboricultural Impact Assessment is submitted for review by Landscape Referral. It is noted that the landscape area does not achieve the requirements of Pittwater DCP control D9.11 and this matter shall be determined by the Assessing Planning Officer. Under the C4 Environmental Living zone requirements, development is to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment with ecological, scientific or aesthetic values, including the retention of natural landscape features and existing trees.</p> <p>The property does not support any prescribed trees however contains a range of small trees and other planting. Additional planting is proposed and the Landscape Plan proposal is noted and no concerns are raised subject to conditions to remove undesirable environmental species.</p>
NECC (Bushland and Biodiversity)	<p>The proposal has been assessed against the following applicable terrestrial biodiversity-related controls:</p> <ul style="list-style-type: none"> • SEPP (Resilience and Hazards) - Coastal Environment Area • Pittwater LEP Clause 7.6 - Biodiversity Protection <p>The proposal is unlikely to impact upon native vegetation or prescribed trees. There are therefore no objections from a biodiversity perspective.</p>
NECC (Coast and Catchments)	<p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Resilience & Hazards) 2021 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP.</p> <p>The proposed development is for demolitions, alterations and additions to the existing dwelling house including an addition of first floor and a swimming pool and associated works</p> <p>Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act</i></p>

Internal Referral Body	Comments
	<p>2016.</p> <p>State Environmental Planning Policy (Resilience & Hazards) 2021</p> <p>The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA.</p> <p>Comment:</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Four Towns Planning Pty. Ltd. dated 26 November 2023, the DA satisfies requirements under clauses 2.10, 2.11 and 2.12 of the SEPP R&H. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021.</p> <p>Pittwater LEP 2014 and Pittwater 21 DCP</p> <p>Estuarine Risk Management</p> <p>The subject property has also been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site.</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Four Towns Planning Pty. Ltd. dated 26 November 2023, the ground floor level for the proposed additions and alterations is above the applicable EPL for the site.</p> <p>The proposed development is therefore not required to satisfy the relevant estuarine risk management requirements of P21 DCP.</p> <p>Development on Foreshore Area</p>

Internal Referral Body	Comments
	<p>A section of the subject property is within the foreshore building line. Part 7, Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014 applies for any development within the foreshore area.</p> <p>The DA proposes no works on the foreshores area and hence, the DA does not require to satisfy the objectives and requirements of Part 7, Clause 7.8 of the Pittwater LEP 2014.</p>
NECC (Development Engineering)	The proposed development is in Region 1. On-site detention is not required as the additional impervious area is under 50 m ² . A geotechnical report has been provided. Vehicle crossing construction is not proposed. I have no objections to the proposed development.
NECC (Riparian Lands and Creeks)	<p>Supported.</p> <p>This application has been assessed against relevant legislation and policy relating to waterways, riparian areas, and groundwater.</p> <p>The site is located on Pittwater and as such the development must not significantly impact on the biophysical, hydrological or ecological integrity of Pittwater, or the quantity and quality of surface and ground water flows that it receives.</p> <p>Subject to conditions, the proposal is unlikely to have an adverse effect on the integrity and resilience of the biophysical, ecological and hydrological environment of Pittwater.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	<p>Reference is made to the proposed development at the above area and Aboriginal heritage.</p> <p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p>

External Referral Body	Comments
	<p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objections.

SEPP (Resilience and Hazards) 2021**Chapter 2 – Coastal Management**

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

Division 1 Coastal Wetlands and littoral rainforest area**2.7 Development on certain land within coastal wetlands and littoral rainforests area**

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

Comment: The proposal is not located within the coastal wetlands or littoral rainforest area.

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

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

Comment: The proposal is not located within proximity to coastal wetlands or littoral rainforest area.

Division 2 Coastal Vulnerability Area**2.9 Development on land within the coastal vulnerability area**

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

- a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and
- b) the proposed development:

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

Comment: Not in coastal vulnerability area.

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

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

Comment: Council is satisfied the development is unlikely to cause adverse impacts to the matters listed (a) to (g) given that all works are outside of the immediate vicinity of the foreshore and within the private allotment. The application has been referred to Council's Biodiversity and Coast and Catchments team who are satisfied with the proposal, subject to conditions which require erosion and sediment control measures.

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

Comment: Council is satisfied the development is sited to avoid impact to the matters in paragraph 1) and construction impacts such as erosion and sediment control can be managed via conditions of consent.

Division 4 Coastal use area**2.11 Development on land within the coastal use area**

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

Comment: Council is satisfied that the development is sited to avoid impacts to the matters in paragraph (a).

Division 5 General**2.12 Development in coastal zone generally—development not to increase risk of coastal hazards**

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

Comment: The proposal is no considered to increase risk of coastal hazards.

2.13 Development in coastal zone generally—coastal management programs to be considered

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Comment: There is no coastal management program for the site.

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

Chapter 4 – Remediation of Land

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

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	8.5m	6.8m - 9.925m	16.7%	No

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.7 Development below mean high water mark	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone C4 Environmental Living

The proposal is considered against the C4 Zone Objectives as follows:

- ***To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.***

Comment: The proposal maintains the dwelling house use, in the general footprint, first floor addition which is compatible with the surrounding buildings. This is considered low impact development in keeping with the surrounds. The proposal does not impact on any specific value listed above.

- ***To ensure that residential development does not have an adverse effect on those values.***

Comment: The proposal does not have an adverse effect given the general footprint is maintained and the general siting of the building is maintained. The height of the building is compatible with the adjoining buildings as viewed from the waterway.

- ***To provide for residential development of a low density and scale integrated with the landform and landscape.***

Comment: The proposal will present as a two story dwelling which is compatible with the surrounding buildings. No significant landscape features are removed via the proposal.

- ***To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.***

Comment: The proposal does not result in any tree removal or removal of sensitive vegetation. Council's Coastal Team are satisfied with the proposal in relation to the impact upon the waterway.

4.6 Exceptions to development standards

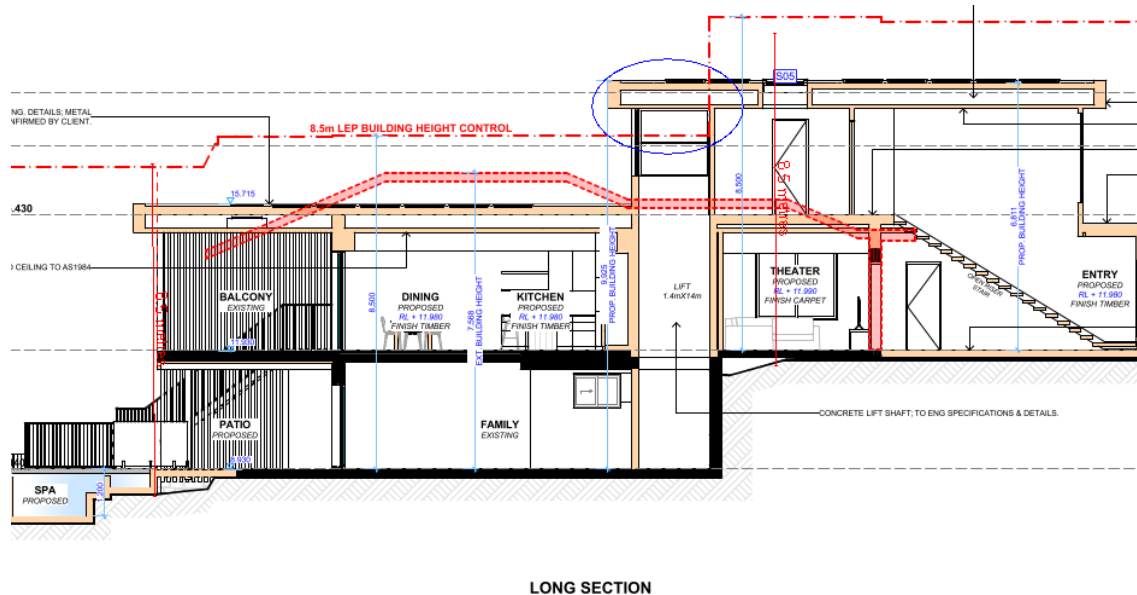
The application seeks consent to vary a development standard as follows:

Development standard: Clause 4.3 Height of Buildings

Requirement: **8.5m**

Proposed: **9.925m** maximum

Percentage of variation: **16.7%**



With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is/is not accompanied by a document that sets out the grounds on which the Applicant seeks to demonstrate the matters set out in Clause 4.6(3)(a) and (b) of the PLEP 2014 (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

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

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

Comment:

The objectives of this clause have been considered pursuant to Section 4.15(a)(i) of the *Environmental Planning and Assessment Act 1979*.

Subclause (2) of this clause provides that:

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

Comment:

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

Subclause (3) of this clause provides that:

(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

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

Comment:

Council is satisfied that the Applicant has demonstrated that compliance with Clause 4.3 is unreasonable or unnecessary in the circumstances of this application for the following reasons:

- The applicant has demonstrated within the Clause 4.6 written request that compliance is unreasonable and unnecessary because the objectives of the development standard have been met, notwithstanding the non-compliance. The written request provides a thorough analysis of the proposal against the objectives of the control as included within pages 8 to 15 of the written request. This approach is confirmed in *Wehbe v Pittwater Council* whereby demonstrating compliance with the underlying objectives of the standard is an acceptable approach in showing that compliance is 'unreasonable or unnecessary'.

Whilst Council is satisfied the applicant's request has demonstrated this, for completeness, an assessment of the proposal against the objectives of the standard is carried out below:

(a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,

Comment: The proposal presents as a two storey dwelling to the public domain which is consistent with the streetscape. The upper floor will be well stepped back from the water and will also reduce the visual bulk when viewed from surrounding properties, largely presenting as a two storey dwelling. The proposal is consistent with existing height and scale of development in Mona Vale which anticipates two storey dwelling, with only the lift providing a part 3 storey portion.

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

Comment: Given that the building will fit within the 8.5m height limit when measured from the 'natural ground level', the proposal is consistent with what is expected within the locality. The surrounding development comprise of a mixture of one and two storey houses, which the proposal is entirely compatible with.

(c) to minimise any overshadowing of neighbouring properties,

Comment: The adjoining properties will maintain high levels of solar access given the northern aspect to the rear yard. The breaching portion of the development does not directly contribute to the overshadowing of the private open space of the adjoining property.

(d) to allow for the reasonable sharing of views,

Comment: View sharing is achieved for the surrounding properties and this is discussed in detail elsewhere within the report.

(e) to encourage buildings that are designed to respond sensitively to the natural topography,

Comment: The proposal provides a substantial step back from the rear boundary and steps in from the site boundaries to mitigate bulk and scale and respond to the level change.

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

Comment: The large setback to the upper floor reduces the visual impact on the waterway and maintains a generally two storey appearance for the building.

Council is satisfied that the proposal meets the objectives of the development standard, notwithstanding the numerical non-compliance.

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

Comment:

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

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

The Clause 4.6 Request argues, in part:

- *The court now considers the definition of "ground level (existing)" Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582, which insists that the ground level (existing) is measured from the excavated ground level (within the footprint of the existing building) to the highest point of the proposal directly above. It is noted that the Court accepted (at [74]) that there is an 'environmental planning ground' that may justify the contravention of the height standard under 'clause 4.6' when the prior excavation of the site (within the footprint of the existing building) distorts the maximum building height plane. This falls hand in hand with the original leading cases *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070 and *Stamford Property Services Pty Ltd v City of Sydney & Anor* [2015] NSWLEC 1189.
- *It is noted that common-sense should prevail from the new court case "Merman Investments Pty Ltd" with the fact that many height planes are now going to be distorted creating an argument which goes hand in hand with the original court cases relating to the extrapolated levels of a site through 'Bettar'.*

As a result of the above, it is determined that the maximum building above ground level (existing) is 9.925m for the proposed alterations and additions. This results in a 1.425m variation or 16.76%. This is a result of the existing building structures on the land which prove that the site has been modified to its current form and measured through the definition of ground level (existing). It is noted that if a natural ground level line was implemented, the structure would comply with the maximum building height control with a maximum 8m height.

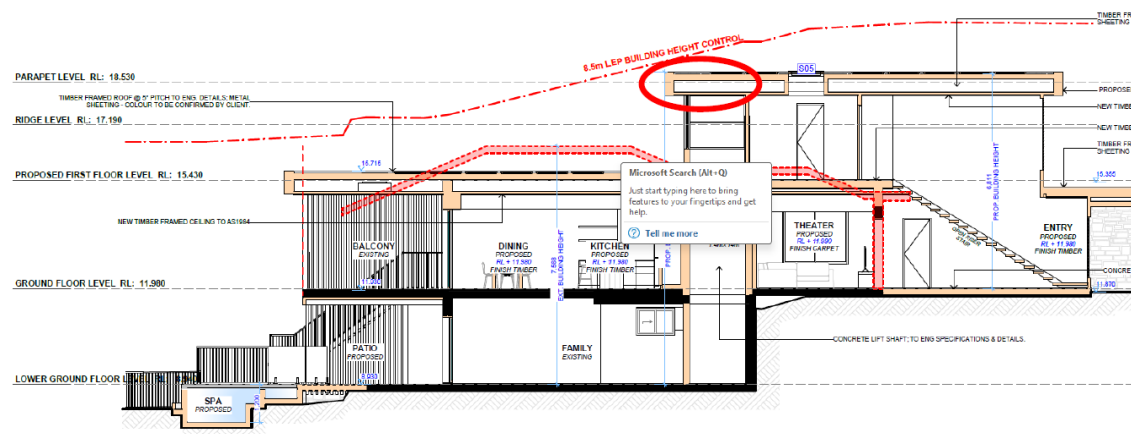
- *The proposed minor breach relates to one portion of the dwelling only, which is dictated by the provision of the lift structure in an area that can access the existing and proposed floors for the*

dwelling. This also includes the parapet area for the first-floor terrace in which the lift will sit for the first floor. It is submitted that the proposal is consistent with the varying building heights of Halesmith Road and Rednal Street. The minor breach is outlined below and shown on the following pages through plan excerpts:

- First Floor Lift/Terrace Roof- 8m (to natural ground) or 9.925m (to exist ground)
- Sufficient environmental planning grounds exist to justify the height of buildings variation namely the topography of the land and man-made alterations to the land which take away from the natural elements of the site which makes strict compliance difficult to achieve whilst appropriately distributing height, in the form of legitimate dwelling, on this particular site.

Planners Comment on Environmental Planning Grounds

It is agreed that the prior excavation of the site is a sufficient environmental planning ground to justify the non-compliance. The breach of the height is located centrally of the site and over a prior excavated area. The area where the lift is located is the most logical area for the proposal to provide access through the lower ground floor, ground floor and new upper level. The lift could not be placed anywhere else to achieve this outcome. It is agreed that if the height was taken from the pre excavated natural ground level, then the proposal would be compliant with the 8.5m height limit. See the plan below, which shows the 8.5 height limit relative to the natural ground level:



Therefore, the Applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of Clause 4.3 for the following reasons:

- The non-compliance is a direct result of the prior excavation of the site. If the height was to be taken from pre-existing natural ground level, it would be compliant.
- The proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, thereby satisfying objects 1.3(c) and (g) of the EPA Act.

Public Interest

Matters relevant to public interest in respect of the development are considered in the relevant sections of this report as per Section 4.15(1)(e) of the EPA Act.

Conclusion

Council is satisfied as to the matters set out in Clause 4.6 of the PLEP 2014.

It is considered on balance, that having regard to the particular circumstances which include the prior excavation of the land and the relatively minor extent of breach, noting that if it weren't for the prior site excavation the proposal would be within the 8.5m height limit, the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

7.2 Earthworks

The objective of Clause 7.2 - 'Earthworks' requires development to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

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

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

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

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

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

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

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

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

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

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

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

(f) the likelihood of disturbing relics

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

(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or

environmentally sensitive area

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

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

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

(i) the proximity to and potential for adverse impacts on any heritage item, archaeological site or heritage conservation area.

Comment: The site is not a heritage item, in the vicinity of a heritage item or in a conservation area or archaeological site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of PLEP 2014, Pittwater 21 DCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

7.6 Biodiversity protection

Before determining a development application for development on land to which this clause applies, this clause requires the consent authority to consider:

(a) whether the development is likely to have:

- (i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and*
- (ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and*
- (iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*
- (iv) any adverse impact on the habitat elements providing connectivity on the land, and*

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the development will not have any adverse impact on the condition, ecological value and significance of the fauna and flora on the land; the importance of the vegetation on the land to the habitat and survival of native fauna; or the habitat elements providing connectivity on the land. Council is also satisfied that the development will not unreasonably fragment, disturb, or diminish the biodiversity structure, function, or composition of the land.

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

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the proposal includes appropriate measures to

avoid, minimise, or mitigate the impacts of the development.

Before granting development consent, this clause also requires the consent authority to be satisfied that:

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

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the development is designed, sited and will be managed to any significant adverse environmental impact.

7.7 Geotechnical hazards

Under Clause 7.7 Geotechnical Hazards, before determining a development application for development on land to which this clause applies, the consent authority must consider the following matters to decide whether or not the development takes into account all geotechnical risks:

- (a) site layout, including access,*
- (b) the development's design and construction methods,*
- (c) the amount of cut and fill that will be required for the development,*
- (d) waste water management, stormwater and drainage across the land,*
- (e) the geotechnical constraints of the site,*
- (f) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment:

The proposed development is supported by a geotechnical risk assessment, architectural plans, an excavation plan, and stormwater management plans that demonstrate all geotechnical risks have been taken into account. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

Development consent must not be granted to development on land to which this clause applies unless:

- (a) the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and*

Comment:

The proposed development is supported by a geotechnical risk assessment and stormwater management plans that demonstrate waste water, stormwater and drainage are suitably managed on site. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

- (b) the consent authority is satisfied that:*
 - (i) the development is designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development, or*
 - (ii) if that risk or impact cannot be reasonably avoided - the development is designed, sited and will be managed to minimise that risk or impact, or*

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

Comment:

The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent. As such, Council can be satisfied that the proposed development has been designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	Ground - 6.0m (Maintains existing) Upper - 9.7m (Complies)	N/A	No (existing, no change) Yes
Rear building line	Foreshore Building Line (FSBL)	Behind FSBL	N/A	Yes
Side building line	2.5m (West)	New work 2.6m (Deck) 2.9m - Laundry	N/A	Yes
	1.0m (East)	New work 1.0m - Deck 1.5m - Guest room	N/A	Yes
Building envelope	3.5m (West)	Outside envelope - Up to 2.1m	N/A	No
	3.5m (East)	Outside envelope - Up to 1.8m	N/A	No
Landscaped area	60%	<u>Proposed</u> 40.8% - Landscape 44.8% - Landscape with allowable variations <u>Existing</u> 42.2% - Landscape 45.8% - Landscape with allowable variations	25%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
A4.9 Mona Vale Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D9.1 Character as viewed from a public place	Yes	Yes
D9.3 Building colours and materials	Yes	Yes
D9.6 Front building line	Yes	Yes
D9.7 Side and rear building line	Yes	Yes
D9.9 Building envelope	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D9.11 Landscaped Area - Environmentally Sensitive Land	No	Yes
D9.14 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D9.17 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

A4.9 Mona Vale Locality

The DFC statement for the Mona Vale locality is as follows:

"Future development will maintain a building height limit below the tree canopy and minimise bulk and scale. Existing and new native vegetation, including canopy trees, will be integrated with the development. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards."

Comment: The proposal will sit below the height of the canopy trees which are within the road reserve and adjoining property. The proposal is sited largely over the existing building footprint and previously disturbed areas within the site and does not result in further impacts to canopy trees or native vegetation.

The building is contemporary with eave overhangs and the new upper level is stepped in from the lower floor to provide modulation of the façade, including the use of timber privacy screens upon the upper level side elevates to add modulation to the façade. A condition of consent will be recommended for colours to be compliant with the DCP, consisting of mid-grey or darker to blend into the natural environment.

The upper level is limited to the front portion of the site to respect the natural slope of the land towards the rear, resulting in a building that is largely two stories in appearance throughout. The need for a centrally located lift results in a part/three story appearance, however, this is centrally located within the site as to mitigate the visual bulk of the upper level as viewed from the water and the rear yard of the adjoining properties.

The proposal does not involve additional site disturbance with the exception of the swimming pool which is an acceptable and common feature of the surrounding properties.

Overall, the proposal meets the Mona Vale Locality DFC statement and will be compatible with the existing streetscape and as viewed from the waterway.

C1.3 View Sharing

The application was notified to the surrounding properties and no submissions were received regarding the proposal, including no concerns raised regarding view sharing.

The applicant has prepared view sharing montages from the two properties across the road 6 and 8

Halesmith Road to demonstrate how the proposal will achieve view sharing. These montages are provided in the architectural plans DA21 to DA24.

For completeness, a view sharing assessment is undertaken for both 6 and 8 Halesmith even though no concerns have been raised in regard to views from these properties during the notification period.

Merit Consideration

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

- *A reasonable sharing of views amongst dwellings.*

Comment:

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

1. Nature of the views affected

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

Comment to Principle 1:

6 Halesmith Road

There is portion of water views which will be impacted from this property. The view also contains an area of sand and land/water interface that is associated with Bayview Dog Park.

8 Halesmith

The view to be obscured is of trees and part of Bayview Dog Park. Long distance views of Ku-ring-gai National Park are also partly obscured.

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

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

Comment to Principle 2:

6 Halesmith Road

The view is across the front boundary from the upper level. There are three areas upon the upper level which are considered with regard to view impacts. First, being a bedroom and

associated balcony off the bedroom, a central balcony which adjoins a living room and another balcony adjoining the same living room. The views are available in a seated and standing position.

8 Halesmith Road

The view is across the front boundary from an upper level balcony associated with a living area. The views are available in a seated and standing position.

3. Extent of impact

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

Comment to Principle 3:

6 Halesmith Road

For this property, the view from the bedroom is the most affected portion of the building and this bedroom and associated balcony loses a portion of water views and portion of views of the dog park. However, a good proportion of water views are still maintained and this includes land water interface, moored sail boats and long distance views to Ku-ring-gai national park. See image 1 below:





Image 1 - View from north-western balcony adjoining bedroom of 6 Halesmith Road. Prepared by Action Plans.

The view from the central balcony (adjoining living room) loses a portion of water views and portion of views of the dog park. However, a good proportion of water views are still maintained and this includes land water interface, moored sail boats and long distance views to Ku-ring-gai national park. See image 2 below:





Image 2 - View from central balcony adjoining living room of 6 Halesmith Road. Prepared by Action Plans.

The view from the north-eastern balcony (adjoining living room) loses a minor portion of water views and minor portion of views of the dog park. However, a high quality proportion of water views are still maintained and this includes land water interface, moored sail boats and long distance views to Ku-ring-gai national park. See image 3 below:

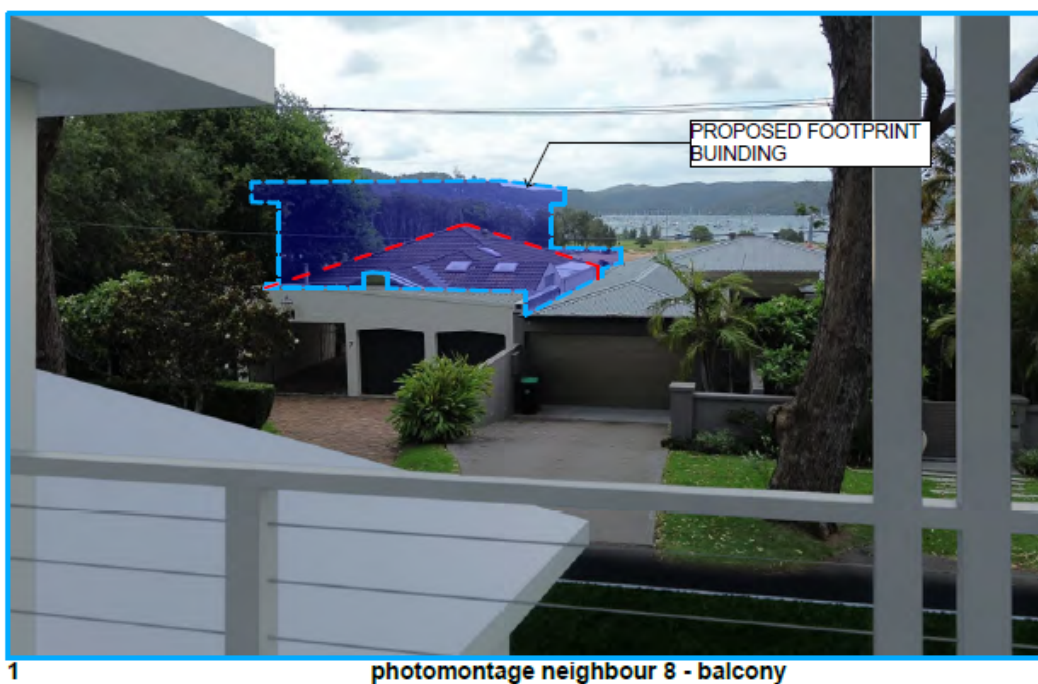


Image 3 - View from north-eastern balcony adjoining living room of 6 Halesmith Road.
Prepared by Action Plans.

The overall level of impact taking into account the amount and quality of views retained when compared to those views impact, is considered to be minor, given that primary views from the living room are largely retained. The area which is most impacted, being the bedroom, still retains good quality water views (approximately 50%) beside the new upper floor.

8 Halesmith Road

For this property, the view from the upper floor balcony which adjoins the living room has a minor impact. The view to be impacted is a view of some trees within the dog park and a portion of the dog park. The entire water view is retained. See image 4 below:



photomontage neighbour 8 - balcony



3 photomontage neighbour 8 - balcony 85%

Image 4 - View from upper level balcony adjoining living room of 8 Halesmith Road. Prepared by Action Plans.

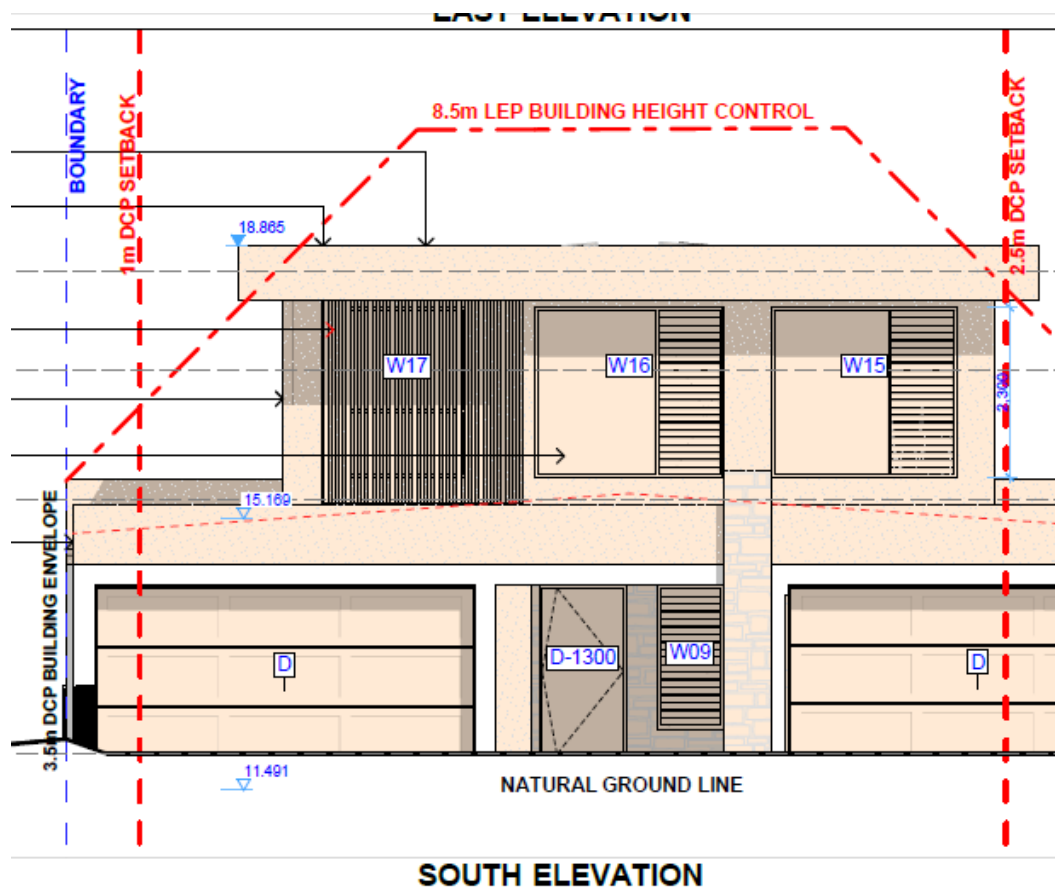
The view impact from the property 8 Halesmith Road is considered to be minor, given it is only a small portion of the view towards the dog park which is impacted and whole water views are retained.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

The view corridor for 6 Halesmith is gained along the eastern side boundary of the subject site and this property is directly across the road from the subject site. Whilst it is acknowledged the proposal has a breach to the building envelope and building height towards the centre of the site, this has no consequence for the view corridor for No 6 Halesmith as the non-compliant portion of the building is not visible given the direct position across the road from the subject site. The view is obscured by the southern facade which is fully compliant with the building height and envelope control, see extract below:



There would be no benefit in terms of views by deleting the portion of the building that is non-compliant with the envelope and height towards the centre of the site, because it is obscured by the leading edge of the southern facade. Furthermore, as shown in image 4, the non-compliant portion of the building does not impact any water views for No.8 Halesmith Road and primary water views are retained in full. Given the proposal is compliant in the presentation to the street/southern facade (which is the relevant portion of building that impacts views for No 6 Halesmith) and the fact that high quality water views are maintained along the eastern boundary of the site, the proposal has demonstrated a suitably skillful design having regard to the planning controls and the position of the two properties directly across the road.

As mentioned within the Clause 4.6 Assessment, the building height is a technical breach due to the pre-excavated ground levels and as such, is supported. Given the breaching portion of the building does not directly impact water views, this also allows support for the technical height breach.

In considering if a more skillful design could limit view impacts, it is contemplated if the upper floor were to be pushed further to the west. In this scenario, this would make no difference for No 8 Halesmith as no further water views would be gained. For No 6 Halesmith, pushing the building further west would open up slightly more views of the dog park and a minor portion of water views from the living room/balcony adjoining living room. However, given the vast majority of water views are already maintained from this area and the leading southern edge of the building is compliant, this change would be of little consequence and is considered

unnecessary in the circumstance.

The applicant has demonstrated a sufficiently skillful design with regard to view sharing and high quality water views are maintained from each affected room of the dwellings across the road.

- *Views and vistas from roads and public places to water, headland, beach and/or bush views are to be protected, maintained and where possible, enhanced.*

Comment: The view from the road is not impacted due to the level of the road which does not allow for water views from the public domain.

- *Canopy trees take priority over views.*

Comment: The proposal does not result in the removal of canopy trees to facilitate views.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D9.3 Building colours and materials

The external finishes on the architectural plan set state the external render is to 'be confirmed by owners'. In order to comply with the DCP and achieve consistency with the C4 Zone Objectives, a condition is recommended for the external finishes to consist of colors mid-grey or darker.

D9.6 Front building line

The DCP requires a minimum front setback of 6.5m. The building, at present, as a 6m setback to the ground floor garage and this is unchanged via the development.

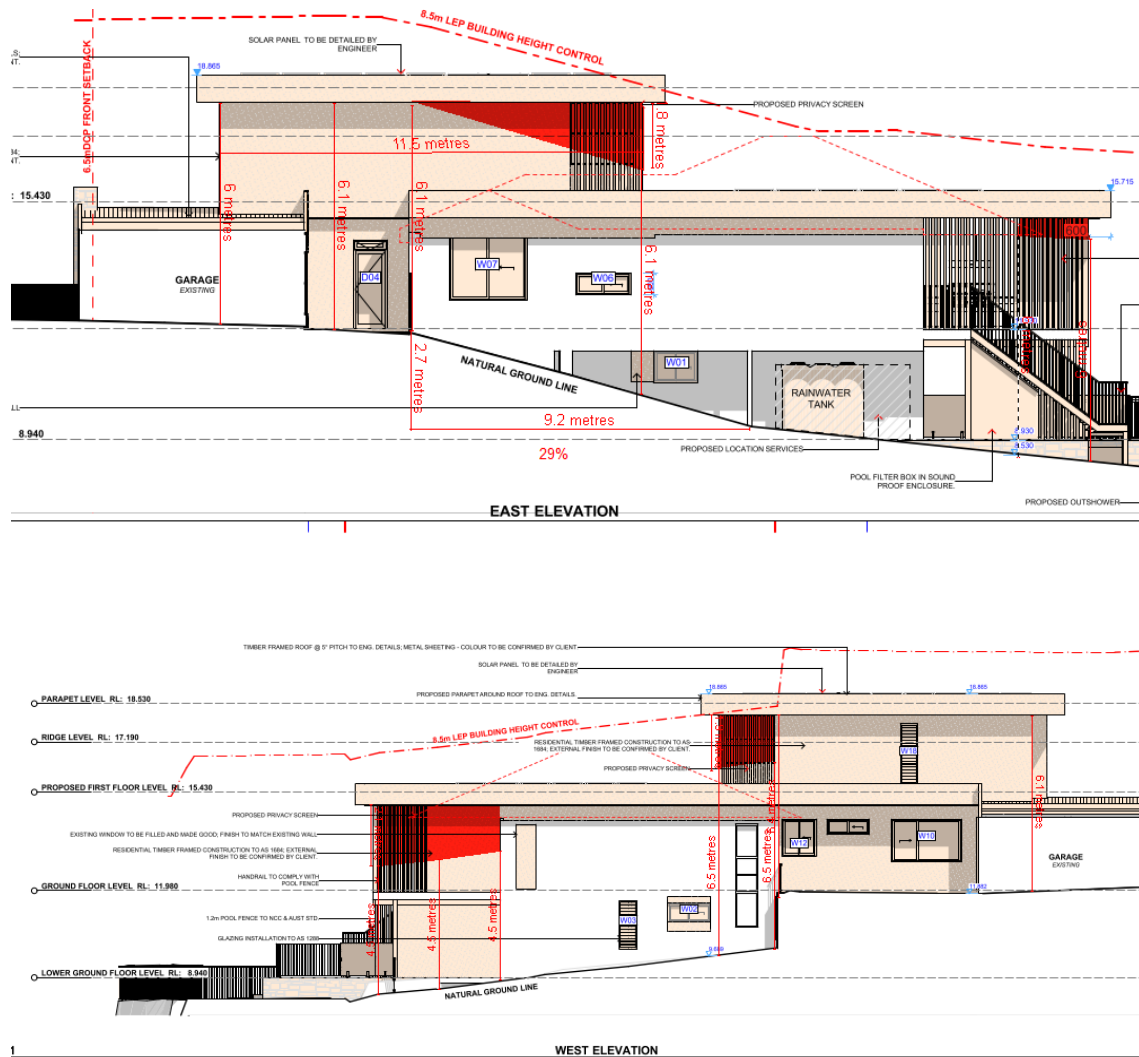
The new proposed upper level has a 9.7m setback to the front boundary, compliant with the control.

D9.9 Building envelope

Description of Non-compliance

The proposed new first floor results in a non-compliance with the building envelope control on east and west elevation. The Pittwater DCP allows for variations to the control where a first floor addition is proposed where the existing dwelling is retained. In this case, the proposal consists of a new first floor addition over the existing ground floor. Furthermore, the DCP also allows for a variation on sloping sites of 30% or more. The area site has a slope of 29% and therefore does not technically meet the slope criteria.

The figures show the extent of variation for the east and west elevation.



In regard to the variation towards the rear of the western elevation (off the deck), this is a result of rebuilding the existing deck, turning the existing privacy screen into a solid wall and a slight extension of the privacy screen. See the image below of the existing situation:



The inclusion of the privacy screen, whilst non-compliant with the envelope, improves privacy for the adjoining property to the west and as such, it is recommended to keep this element.

In regard to variation to the upper level on the eastern and western elevation, this stems from the location of the elevator and subsequent balconies either side the elevator. The elevator is in the

optimal position to service the existing lower ground floor and the new upper floor. The elevator itself is within the envelope. Whilst the privacy screens on the east and west elevation of the upper floor terrace encroach the envelope, they are of an open construction (timber slats) to limit bulk and provide variation of materials. Given the relatively short overall length of the upper level, the encroaching privacy screens are not considered excessive or necessitate deletion, as they enhance privacy between properties.

In considering the variation to the control, the proposal is assessed against the outcomes of the control as follows:

Outcome 1) To achieve the desired future character of the Locality.

Comment: The site falls away from the road frontage and as a result, the addition will not have dominant impact upon the streetscape and present as two storey building. The surrounding locality consists of detached dwellings houses, one and two stories in height and the proposal is not inconsistent with this form of development. The dwelling is part three storey towards the centre but only due to the lift shaft. However, this does not impact upon the street character or add additional scale when viewed from the street.

Outcome 2) To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.

Comment: Surrounding the site are existing canopy trees which will have a height greater than the proposed additions.

Outcome 3) To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.

Comment: The proposal will not result in the removal of any vegetation and new vegetation can be accommodated within an existing clear area on the site. The spatial proportions of the site are largely unchanged, with the only change to the footprint being infilling of central portions of the ground floor and a pool at the rear. Overall, the footprint of the building and spatial proportions to the street and neighbors remain largely as existing.

Outcome 4) The bulk and scale of the built form is minimised. (En, S)

Comment: The low roof pitch has been used to reduce the overall height and scale associated with the first floor addition. Reasonable setbacks have been provided to the upper level to limit building bulk and the presentation of walls to the side boundaries. The length of the upper floor addition is fairly modest and is setback from all sides of the lower floor. As presenting to the street, the proposal complies with the height and envelope.

Outcome 5) Equitable preservation of views and vistas to and/or from public/private places. (S)

Comment: The proposal results in a reasonable view sharing outcome as discussed elsewhere within this report. The view montages provided confirm the non-compliant element does not have a direct impact on water views.

Outcome 6) To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties. (En, S)

Comment: Limited windows have been provided on the side elevation of the first floor addition to minimise direct overlooking. The encroaching privacy screens enhance privacy. The adjoining

properties will maintain compliant levels of solar access given the northern orientation of the sites.

Outcome: Vegetation is retained and enhanced to visually reduce the built form. (En)

Comment: No tree removal is proposed as part of the application and vegetation is retained throughout the site.

It has been demonstrated that the proposal is consistent with the outcomes of the control and therefore in this circumstance, a variation is supported to the Pittwater DCP.

D9.11 Landscaped Area - Environmentally Sensitive Land

Description of Non-compliance

The DCP requires the site to consist of 60% landscaped area. The site, at present, has 42.2% landscaping.

The proposal provides 40.8% landscaping or a reduction of 1.4% (or 12m²). Providing the outcomes of the control are achieved, the variation clause allows up to 6% of the total site area to be provided as impervious landscape treatments providing these areas are for outdoor recreational purposes only.

When applying the variation clause, the site has a total landscaped area of 44.8%. The proposal still falls short of the 60% requirement and therefore, the proposed development is assessed against the outcomes of the control below.

It is noted that the reduction to landscaped area is caused by the inclusion of a new pool at the rear. There have been number of previous paved areas proposed to be changed to grass to reduce the level of non-compliance. However, due to the inclusion of the pool the slight further reduction in landscape area (12m²) is unavoidable.

Outcome 1) Achieve the desired future character of the Locality.

Comment: The proposed development consists of a two storey built form within a landscaped setting which is suitable for the character of the area. It is important to note that the reduction in landscape area is a result of the inground pool, which is a common feature for the locality.

Outcome 2) The bulk and scale of the built form is minimised.

Comment: The built form has been articulated and setback to minimise the bulk and scale. The upper floor has been setback each ground floor level. The pool is inground to limit bulk and scale.

Outcome 3) A reasonable level of amenity and solar access is provided and maintained.

Comment: As discussed elsewhere within this report, the proposal has demonstrated a satisfactory outcome in regards to solar access given the orientation of the site. The proposal has adequate privacy treatments to windows and privacy screening where required to mitigate views. View sharing is maintained.

Outcome 4) Vegetation is retained and enhanced to visually reduce the built form.

Comment: No vegetation is removed to facilitate the development. New landscape planting is proposed and required as a condition of consent.

Outcome 5) Conservation of natural vegetation and biodiversity.

Comment: The proposal will not have a detrimental impact in regards to biodiversity. New native planting is proposed to improve the current site.

Outcome 6) Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels.

Comment: Council's development engineer has reviewed the proposal and has found it to be acceptable with regards to stormwater runoff. The minor variation to landscaped area will not cause adverse impacts in regards to stormwater runoff.

Outcome 7) To preserve and enhance the rural and bushland character of the area.

Comment: No trees are proposed to be removed. New landscaped plantings will be required to be planted as a condition and as per the landscape plan.

Outcome 8) Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management.

Comment: The site is able to adequately deal with stormwater runoff as demonstrated via the proposed stormwater plan.

The proposed development is considered to achieve the required outcomes of the control and Pittwater DCP, and therefore the variation is supported in this circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$13,101 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,310,050.

CONCLUSION

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

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

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

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

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

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

Council is satisfied that the Applicant's written request under Clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify variation of the development standard contained within Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

PLANNING CONCLUSION

This proposal, for alterations and additions to a dwelling house and swimming pool has been referred to the Development Determination Panel (DDP) due to the breach of building height up to 16.7% due to the location of the lift shaft over the pre-existing excavated ground level.

No objections were raised regarding the development.

The critical assessment issues include the height breach, envelope breach and landscape area which have all been addressed in detail within this report.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment.

The proposal has therefore been recommended for approval.

REASON FOR DETERMINATION

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

RECOMMENDATION

That Northern Beaches Council, as the consent authority, vary the development standard contained within Clause 4.3 Height of Buildings, pursuant to Clause 4.6 of the Pittwater Local Environmental Plan 2014 because the Applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) of Clause 4.6.

Accordingly Council as the consent authority grant Development Consent to DA2023/1736 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 4 DP 811588, 7 Halesmith Road, MONA VALE, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA03	A	Site Analysis	Action Plans	25 January 2024
DA04	A	Site/Roof/Sediment Control/Waste/Stormwater Concept Plan	Action Plans	25 January 2024
DA05	A	Existing Lower Ground Floor Plan	Action Plans	25 January 2024
DA06	A	Existing Ground Floor Plan	Action Plans	25 January 2024
DA07	A	Proposed Lower Ground Floor Plan	Action Plans	25 January 2024
DA08	A	Proposed Ground Floor Plan	Action Plans	25 January 2024
DA09	A	Proposed First Floor Plan	Action Plans	25 January 2024
DA10	A	East and South Elevation	Action Plans	25 January 2024
DA11	A	West Elevation	Action Plans	25 January 2024

DA12	A	North Elevation	Action Plans	25 January 2024
DA13	A	Long Section Plan	Action Plans	25 January 2024
DA14	A	Cross Section Plan	Action Plans	25 January 2024
DA19	A	Sample Board	Action Plans	25 January 2024
L/01	-	Landscape Planting Plan	ATC	22 November 2023
L/02	-	Landscape Specification	ATC	22 November 2023
L/03	-	Landscape Details	ATC	22 November 2023
SW00	A	Stormwater Cover Sheet	Hyten Engineering	17 November 2023
SW01	A	Stormwater Plan	Gyten Engineering	17 November 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Arboricultural Impact Assessment	-	Hugh the Arborist	17 November 2023
Waste Management Plan	-	-	-
Geotechnical Assessment AG 23739	1	Ascent Geo	30 October 2023
BASIX Certificate No.A1375670	-	Action Plans	10 November 2023

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

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

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

2. **Compliance with Other Department, Authority or Service Requirements**

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	15/12/2023

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

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

3. Prescribed Conditions

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

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

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

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

Reason: Legislative requirement.

4. General Requirements

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

Demolition and excavation works are restricted to:

 - 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).
- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the following is required:
 - i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less

- than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
 - iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
 - (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
 - (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
 - (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
 - (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$13,100.50 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$1,310,050.00.

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

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

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

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

6. Security Bond

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE**7. Stormwater Disposal from Low Level Property**

The applicant is to demonstrate how stormwater from the new development within this consent shall be disposed of to an existing approved system or in accordance with Northern Beaches Council's Water Management for Development Policy in particular Section 5.5 Stormwater Drainage from Low Level Properties. Details demonstrating that the existing approved system can accommodate the additional flows or compliance with Northern Beaches Council's policy by an appropriately qualified Civil Engineer are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

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

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by AscentGeo Geotechnical Consulting dated 30.10.2023 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

9. Compliance with Standards

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

Standards.

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

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

10. External Finishes to Facade and Roof

The external finish to the façade shall consist of colours mid-grey or darker. The roof colour shall be mid-grey or darker in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development. To ensure the building better blends into the natural environment.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

11. Installation and Maintenance of Sediment and Erosion Control

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

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

DURING BUILDING WORK

12. Requirement to notify about new Acid Sulfate Soils evidence

Any new information revealed during excavation works that has the potential to alter previous conclusions about Acid Sulfate Soils shall be immediately notified to the Council and the Principal Certifier and a report be obtained from a suitably qualified person. Any recommendations provided by the report are to be complied with during works.

Reason: To protect the environment.

13. Site Contamination - Acid Sulfate Soils

All stockpiles of potentially contaminated soil must be stored in a secure area in a way that is not likely to cause pollution or be a public health risk.

All contaminated soil removed from the site must be disposed of at a waste facility that can lawfully receive that waste and must be done in accordance with all relevant Acts, Regulations and Guidelines.

Copies of all test results and disposal dockets must be retained by whom? for at least 3 years and be made available to authorised Council officers on request.

Note: The following Acts and Guidelines applied at the time of determination:

i) Protection of the Environment Operations Act 1997;

- ii) Environment Protection Authority, Waste Classification Guidelines (2014);
- iii) Water Quality Australia, National Acid Sulfate Soils Guidance (2018); and
- iv) Acid Sulfate Soil Advisory Committee, Acid Sulfate Soil Manual (1998).

Reason: To protect environment and public health.

14. Protection of Existing Street Trees

All existing street trees in the vicinity of the works shall be retained during all construction stages, and the street trees fronting the development site shall be protected by tree protection fencing in accordance with Section 4 of AS4970-2009 Protection of trees on development sites. As a minimum the tree protection fencing for street trees fronting the development site shall consist of standard 2.4m panel length to four sides and in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings, unless otherwise directed by an Arborist with minimum AQF Level 5 in arboriculture. All fencing shall be located to allow for unrestricted and safe pedestrian access upon the road verge.

All street trees within the road verge are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree(s) is prohibited. No excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of street trees.

Reason: Street tree protection.

15. Tree and Vegetation Protection

- a) Existing trees and vegetation shall be retained and protected, including:
 - i) all trees within the site, including trees and vegetation nominated for retention on the approved Plans,
 - ii) all trees and vegetation located on adjoining properties,
 - iii) all trees and vegetation within the road reserve.
- b) Tree protection shall be undertaken as follows:
 - i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
 - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
 - v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
 - vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
 - vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
 - viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-

2009 Protection of trees on development sites,

ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,

x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,

xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

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

Reason: Tree and vegetation protection.

16. Wildlife Protection

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

Reason: To protect native wildlife.

17. Road Reserve

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

Reason: Public safety.

18. Installation and Maintenance of Sediment and Erosion Controls

Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan prepared by <INSERT> prior to commencement of any other works on site.

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: To protect the receiving environment.

19. Survey Certificate

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

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

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

20. **Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

21. **Aboriginal Heritage**

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

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

Reason: Aboriginal Heritage Protection.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

22. **Landscape Completion**

Landscape works are to be implemented in accordance with the approved Landscape Plan, and inclusive of the following conditions:

- a) landscape works are to be contained within the legal property boundaries,
- b) tree, shrub and groundcover planting shall be installed as indicated on the approved Landscape Plan, unless otherwise imposed by conditions,
- c) the nominated *Raphiolepis* species shall not be planted and shall be replaced with a non self-seeding species of similar form and size,
- d) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone.

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

Reason: Environmental amenity.

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

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

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

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

24. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian

Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

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

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

The Applicant is to submit the completed Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) to the Principal Certifier prior to issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

26. **Swimming Pool Requirements**

The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2009;
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifier, certifying compliance with Australian Standard 1926.

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system. Appropriate instructions of artificial resuscitation methods.

(d) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.

(e) Signage showing resuscitation methods and emergency contact

(f) All signage shall be located in a prominent position within the pool area.

(g) Swimming pools and spas must be registered with the *Division of Local Government*.

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

Reason: To protect human life.

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

27. **Landscape Maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting. If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent.

The approved landscape area shall in perpetuity remain as planting under the development consent, and shall not be replaced with any hard paved surfaces or structures.

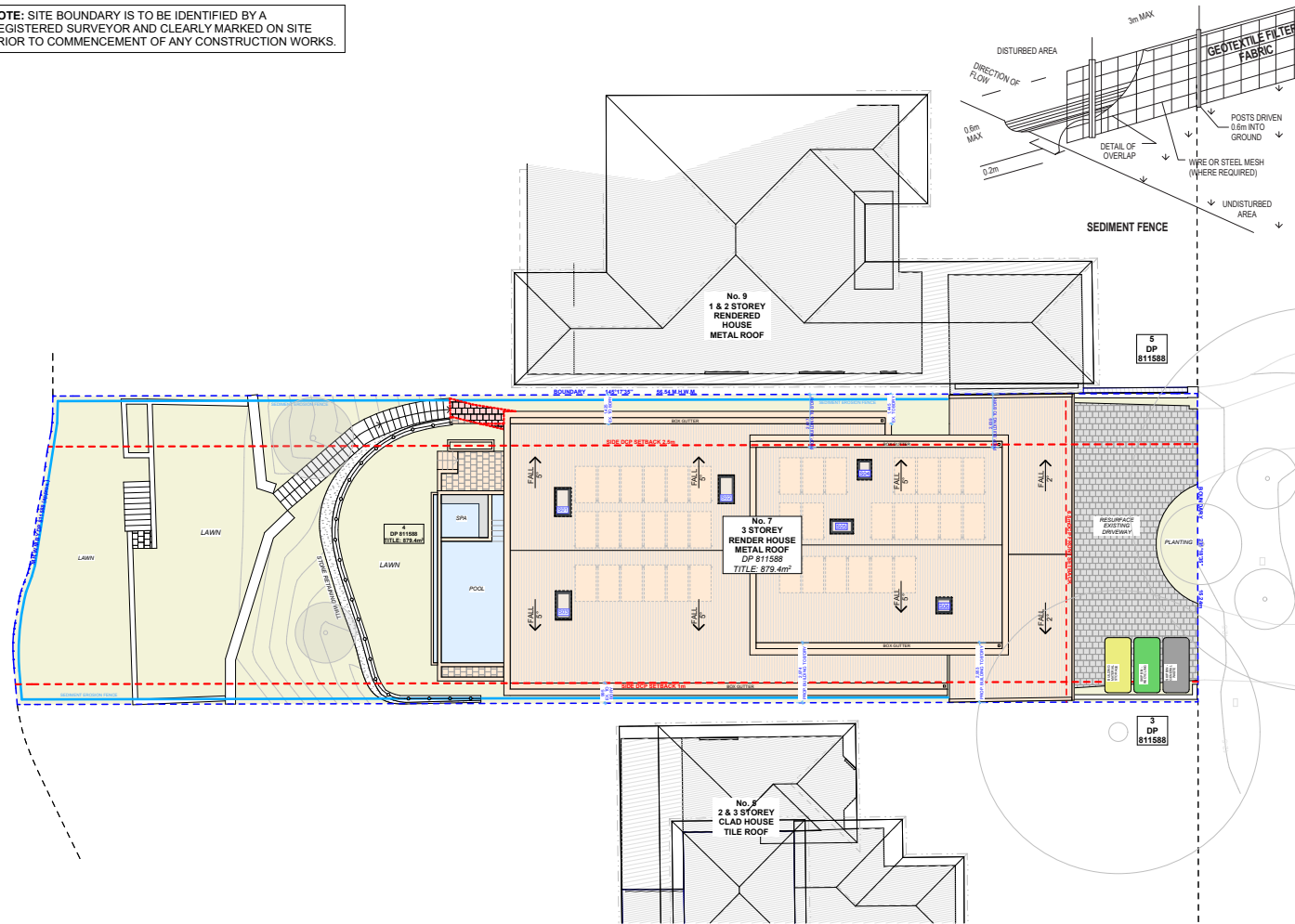
Reason: To maintain local environmental amenity.

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

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

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

NOTE: SITE BOUNDARY IS TO BE IDENTIFIED BY A REGISTERED SURVEYOR AND CLEARLY MARKED ON SITE PRIOR TO COMMENCEMENT OF ANY CONSTRUCTION WORKS.



NOTES REGARDING BOUNDARY
THE INFORMATION SHOWN ON THIS PLAN IS FOR DESIGN PURPOSES ONLY. THE POSITION OF BOUNDARY LINES HAVE BEEN ESTABLISHED BY A SURVEY TO MEET THE IDENTIFICATION REQUIREMENTS FOR COUNCIL AND NOT FOR REGISTRATION WITH THE LAND REGISTRATION SERVICES NSW NOR MAY THIS PLAN BE USED FOR ANY OTHER PURPOSE. SUBSEQUENT REGISTERED OR OTHER SURVEYS MAY AFFECT THE DEFINED BOUNDARY POSITIONS IN THIS AREA. ANY DIFFERENCES OF THIS NATURE ARE BEYOND THE PURPOSES OF THIS PLAN. THIS PLAN IS FOR THE ABOVE STATED PURPOSES ONLY. RESTRICTIONS ON THE TITLE HAVE NOT BEEN INVESTIGATED. IF FURTHER DEVELOPMENT IS CONTEMPLATED OR CONSTRUCTION INTENDED THEN IT IS IMPORTANT THAT A SURVEY SET OUT IS CARRIED OUT.

DUST CONTROL :
TO REDUCE DUST GENERATED BY WIND ACTION, THE REMOVAL OF THE TOP SOIL IS TO BE MINIMISED. TO PREVENT DUST GENERATION, WATERING DOWN OF THE SITE, ESPECIALLY DURING THE MOVEMENT OF MACHINERY IS REQUIRED. WHERE EXCAVATING INTO ROCK, KEEP THE SURFACE MOIST TO MINIMISE DUST. CONSTRUCT A GRAVEL ENTRY/EXIT POINT USING BLUE METAL AND RESTRICT ALL VEHICLE MOVEMENTS WITHIN THE SITE TO A MINIMUM. ENSURE WIND BREAKS, SUCH AS EXISTING FENCES ARE MAINTAINED DURING THE CONSTRUCTION PHASE UNTIL NEW LANDSCAPING IS PROVIDED OR REINSTATED. PREVENT DUST BY COVERING STOCKPILES.

SEDIMENT NOTE :
1. ALL EROSION AND SEDIMENT CONTROL MEASURES TO BE INSPECTED AND MAINTAINED DAILY BY THE SITE MANAGER.
2. MINIMISE DISTURBED AREAS, REMOVE EXCESS SOIL FROM EXCAVATED AREA AS SOON AS POSSIBLE.
3. ALL MATERIAL STOCKPILE TO BE CLEAR FROM DRAINS, GUTTERS AND FOOTPATHS, OR WITHIN SEDIMENT FENCE AREA.
4. DRAINAGE TO BE CONNECTED TO STORMWATER AS SOON AS POSSIBLE. IF STORED ON SITE, IT MUST BE FILTERED BEFORE RELEASING INTO STORMWATER SYSTEM OR WATERWAYS.
5. ROADS AND FOOTPATHS TO BE SWEEP DAILY.

STOCKPILES :
ALL STOCKPILES ARE TO BE KEPT ON-SITE WHERE POSSIBLE. ANY MATERIALS PLACED ON THE FOOTPATHS OR NATURE STRIPS REQUIRE COUNCIL'S PERMISSION.
ALL STOCKPILES ARE TO BE PLACED AWAY FROM THE DRAINAGE LINES AND STREET GUTTERS. IT IS BEST TO LOCATE THESE ON THE HIGHEST PART OF THE SITE IF POSSIBLE. PLACE WATERPROOF COVERING OVER STOCKPILES.
IF REQUIRED PROVIDE DIVERSION DRAIN & BANK AROUND STOCKPILES.

GUTTER PROTECTION :
PROVIDE PROTECTION TO DOWNHILL GRATE IN GUTTER BY MEANS OF SAND BAGS OR BLUE METAL WRAPPED IN GEOTEXTILE FABRIC. WHEN SOIL OR SAND BUILDS UP AROUND THIS SEDIMENT BARRIER, THE MATERIAL SHOULD BE RELOCATED BACK TO THE SITE FOR DISPOSAL.

NOTE: ALL PROPOSED STORMWATER TO CONNECT WITH EXISTING

1

SITE / ROOF / SEDIMENT EROSION / WASTE MANAGEMENT / STORMWATER CONCEPT PLAN

1:200



ACTION PLANS

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REV.	DATE	COMMENTS	DRWN
A	13.11.2023	DA SUBMISSION	CR

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All errors and omissions are to be verified by the Builder/Contractor/owner and referred to the designer prior to the commencement of works.

LEGEND

	EXISTING		TILED FLOOR
	DEMOLISHED		TIMBER FLOOR
	METAL ROOFING		BRICKWORK
	TILED ROOFING		
	TIMBER STUD		

CLIENT

Ian & Jann McDondal

PROJECT ADDRESS

7 Halesmith Road Mona Vale, NSW, 2103

DRAWING NO.

DA04

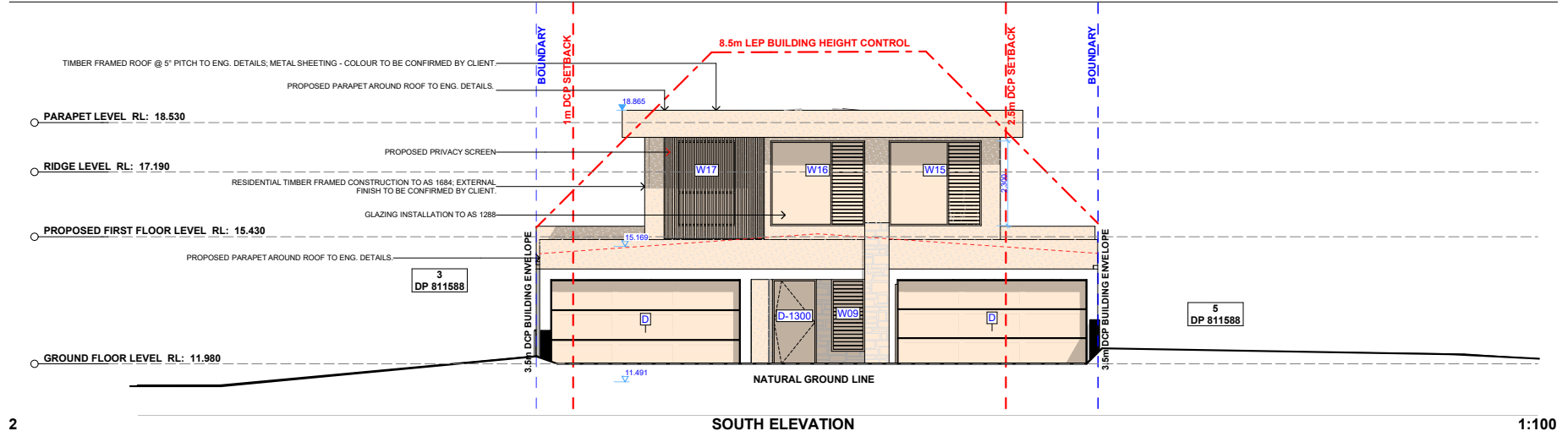
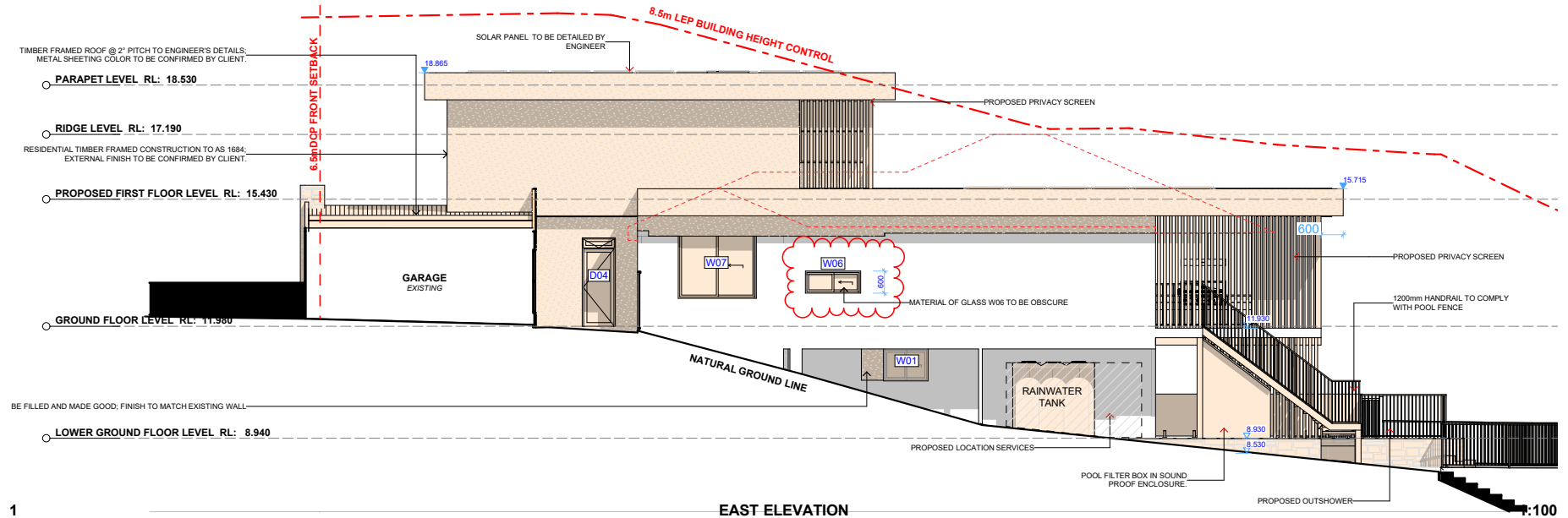
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Thursday, 25 January 2024

DRAWING NAME

SITE / ROOF / SEDIMENT EROSION / WASTE MANAGEMENT / STORMWATER CONCEPT PLAN

SCALE
1:200 @A3



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All errors and omissions are to be verified by the Builder/contractor/client and referred to the designer prior to the commencement of works.

LEGEND

	METAL ROOFING
	TILED ROOFING
	TIMBER CLAD
	BRICKWORK
	CONCRETE

EXISTING

CLIENT

Ian & Jann McDonald

PROJECT ADDRESS

7 Halesmith Road Mona Vale, NSW, 2103

DRAWING NO.

DA10

DATE

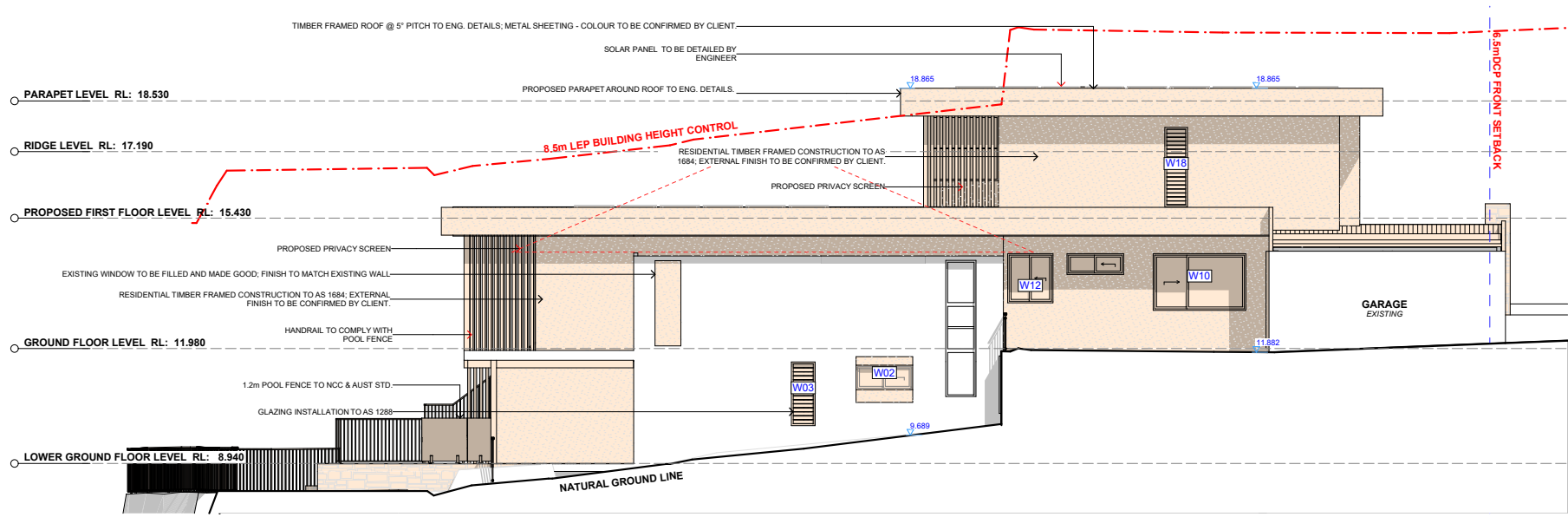
Thursday, 25 January 2024

DRAWING NAME

EAST / SOUTH ELEVATION

SCALE

1:100 @A3



1 WEST ELEVATION 1:100



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All errors and omissions are to be verified by the Builder/Contractor/owner and referred to the designer prior to the commencement of works.

LEGEND	EXISTING
METAL ROOFING	EXISTING
TILED ROOFING	
TIMBER CLAD	
BRICKWORK	
CONCRETE	

CLIENT
Ian & Jann McDonald

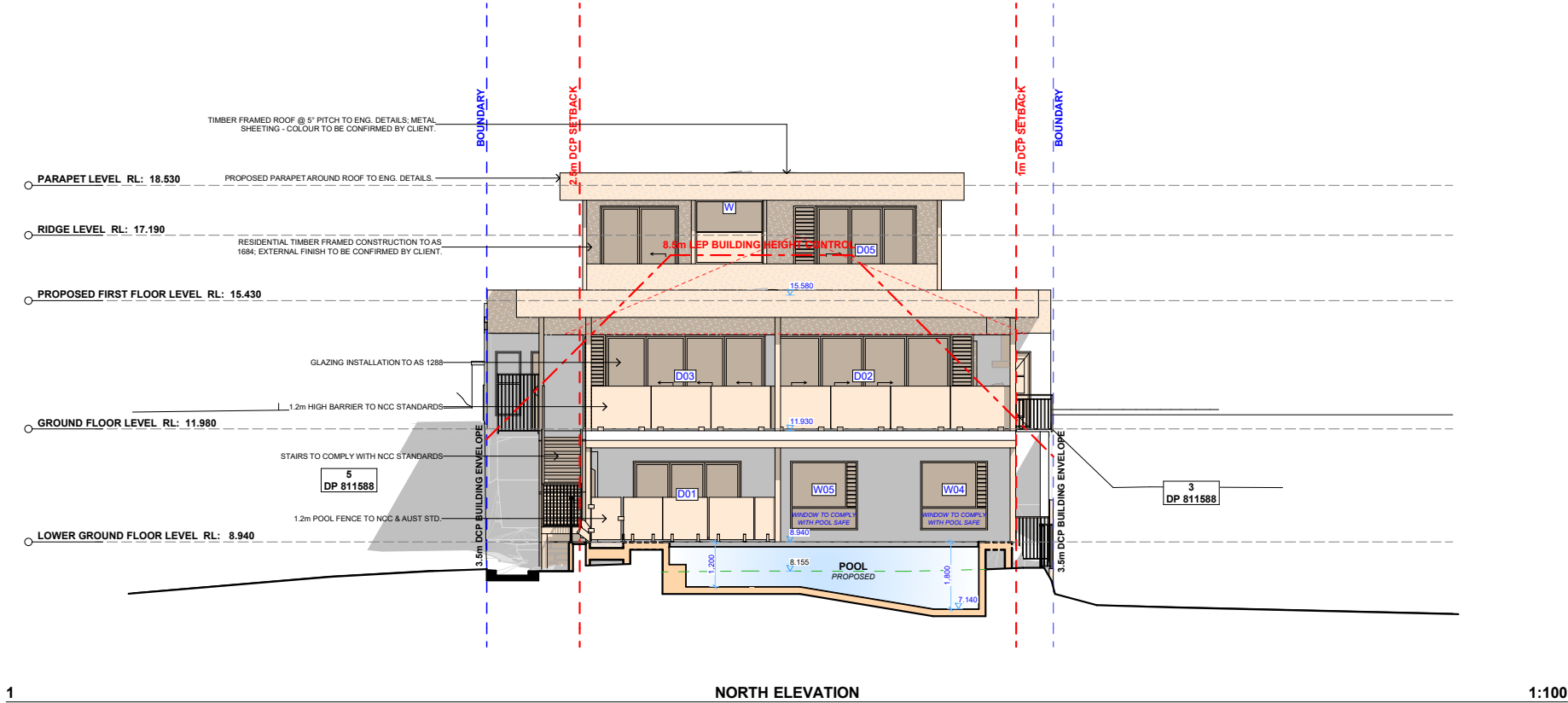
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DRAWING NO.
DA11

DATE
Thursday, 25 January
2024

DRAWING NAME
WEST ELEVATION

SCALE
1:100 @A3



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The Builder/contractor/owner is to ensure that the approved boundary setbacks and approved levels are confirmed and set out by a registered Surveyor prior to construction, the boundary setbacks take precedence over all other dimensions. The Builder/contractor shall check and verify ALL dimensions on site prior to commencement of any work, creation of shop drawings, or fabrication of components.

All errors and omissions are to be verified by the Builder/contractor/owner and referred to the designer prior to the commencement of works.

LEGEND	EXISTING
METAL ROOFING	EXISTING
TILED ROOFING	
TIMBER CLAD	
BRICKWORK	
CONCRETE	

CLIENT
Ian & Jann McDondal

PROJECT ADDRESS
7 Halesmith Road Mona
Vale, NSW, 2103

DRAWING NO.
DA12

DATE
Thursday, 25 January
2024

DRAWING NAME
NORTH ELEVATION

SCALE
1:100 @A3



**WRITTEN REQUEST PURSUANT TO CLAUSE 4.6
OF PITTWATER LOCAL ENVIRONMENTAL
PLAN 2014**

**VARIATION OF A DEVELOPMENT STANDARD
REGARDING THE HEIGHT OF BUILDINGS AS
DETAILED IN CLAUSE 4.3 OF PITTWATER
LOCAL ENVIRONMENTAL PLAN 2014**

**Alterations and additions to an existing
dwelling house including a swimming pool
and associated works**

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Alterations and additions to existing dwelling house including a swimming pool and associated works

This report has been prepared to support a Development Application under the *Environmental Planning and Assessment Act 1979*.

Report prepared by:

Mathew Quattroville
Director – Four Towns Pty Ltd

Report prepared for:

Ian and Jann McDonald

26 November 2023

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Alterations and additions to existing dwelling house including a swimming pool and associated works

Introduction

This objection is made pursuant to the provisions of Clause 4.6 of Pittwater Local Environmental Plan 2014. In this regard, it is requested Council support a variation with respect to compliance with the maximum building height of a building as described in Clause 4.3 of the Pittwater Local Environmental Plan 2014 (PLEP 2014). It is noted that this request is made for the proposed alterations and additions to a dwelling house including a swimming pool and associated works at 7 Halesmith Road, Mona Vale.

The following assessment of the variation to Clause 4.3 – Building Height development standard, has taken into consideration the judgements contained within *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582*, *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

Requirement	8.5m
Proposed	9.925m
Is the planning control in question a development standard?	Yes
Is the non-compliance with to the clause requirement a numerical/or performance based variation?	Numerical
If numerical enter a % variation to requirement	16.76%

The proposal must satisfy the objectives of Clause 4.3 – Height of Buildings, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the PLEP 2014. The proposal is consistent with surrounding developments and the proposed minor increase is compatible with the locality and complies with other relevant controls which determine the built form of the site.

Clause 4.6 Variation Requirements

Compliance being unreasonable or unnecessary

1. Compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: *Wehbe v Pittwater Council at [42] and [43]*.
2. The underlying objective or purpose of Clause 4.3(2) is not relevant to the development with the consequence that compliance is unnecessary. *Wehbe v Pittwater Council at [45]*
3. The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable. *Wehbe v Pittwater Council at [46]*
4. The development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the stand is unnecessary and unreasonable: *Wehbe v Pittwater Council at [47]*.
5. The relevance of the zoning provisions of the land to which the development is proposed.

Sufficient environmental planning grounds

1. First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard"
2. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the

Alterations and additions to existing dwelling house including a swimming pool and associated works

consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31]

Is the proposed development in the public interest?

The Consent Authority must be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of:

- a. the particular development standard;
- b. the zone in which the development is proposed to be carried out.

Secretary's Concurrence

Under clause 4.6(5), in deciding whether to grant concurrence, the Secretary must consider the following matters:

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

General Provisions Relating to Clause 4.6 which will be applicable to Clause 4.3(2) Height of Building

4.6 Exceptions to development standards

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

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

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

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

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

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

(a) the consent authority is satisfied that—

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

(5) In deciding whether to grant concurrence, the Planning Secretary must consider—

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*

Alterations and additions to existing dwelling house including a swimming pool and associated works

- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.*

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if—

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Note— *When this Plan was made it did not include all of these zones.*

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

- (a) a development standard for complying development,*
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
- (c) clause 5.4.*

Comment: As detailed previously in this request, Clause 4.6 of PLEP2014 is applicable to enable a variation to the Height of Building to permit Northern Beaches Council power to grant development consent to the subject development.

This proposal involves a departure from the Height of Building control of MLEP2013, a formal variation to this standard is required under *Clause 4.6 – Exceptions to Development Standards*. This provision allows consent to be granted for a development even though it would contravene a development standard imposed by this or any other planning instrument.

The provisions of Clause 4.6, which the consent authority must have regard to in determining whether a development that contravenes a development standard should be supported, includes the following:

- *That compliance with the development standard is unreasonable and unnecessary in the circumstances of the case; Cl 4.6 (3)(a)*
- *That there is sufficient environmental planning grounds to justify contravening the development standard; Cl 4.6 (3) (b)*
- *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: Cl 4.6 (4)(a)(ii)*
- *The public benefit of maintaining the development standard, and Cl 4.6 (5)(b)*
- *Any other matters required to be taken into consideration by the Planning Secretary before granting concurrence Cl 4.6 (5)(c)*

4.3 Height of buildings

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

- (a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*

Alterations and additions to existing dwelling house including a swimming pool and associated works

- (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,
- (c) to minimise any overshadowing of neighbouring properties,
- (d) to allow for the reasonable sharing of views,
- (e) to encourage buildings that are designed to respond sensitively to the natural topography,
- (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

(2A) Despite subclause (2), development on land—

- (a) at or below the flood planning level or identified as “Coastal Erosion/Wave Inundation” on the Coastal Risk Planning Map, and
- (b) that has a maximum building height of 8.5 metres shown for that land on the Height of Buildings Map,
may exceed a height of 8.5 metres, but not be more than 8.0 metres above the flood planning level.

(2B) Despite subclause (2), development on land—

- (a) at or below the flood planning level or identified as “Coastal Erosion/Wave Inundation” on the Coastal Risk Planning Map, and
- (b) that has a maximum building height of 11 metres shown for that land on the Height of Buildings Map,
may exceed a height of 11 metres, but not be more than 10.5 metres above the flood planning level.

(2C) Despite subclause (2), development on an area of land shown in Column 1 of the table to this subclause and identified as such on the Height of Buildings Map, may exceed the maximum building height shown on the Height of Buildings Map for that land, if the height of the development is not greater than the height shown opposite that area in Column 2.

Column 1 Column 2

Area Maximum height above the flood planning level

Area 1 11.5 metres

Area 2 8.5 metres on the street frontage and 10.5 metres at the rear

Area 3 8.5 metres

Area 4 7.0 metres

(2D) Despite subclause (2), development on land that has a maximum building height of 8.5 metres shown for that land on the Height of Buildings Map may exceed a height of 8.5 metres, but not be more than 10.0 metres if—

- (a) the consent authority is satisfied that the portion of the building above the maximum height shown for that land on the Height of Buildings Map is minor, and
- (b) the objectives of this clause are achieved, and
- (c) the building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%), and
- (d) the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.

(2E) Despite subclause (2), development for the purposes of shop top housing on land identified as “Area 5” on the Height of Buildings Map may have a height of up to 10 metres if the top floor of the building is setback a minimum of 6 metres from the boundary to the primary street frontage.

(2F) Despite subclause (2), development on land identified as “Area 6” on the Height of Buildings Map must not exceed 8.5 metres within the area that is 12.5 metres measured from the boundary of any property fronting Orchard Street, Macpherson Street, Warriewood Road or Garden Street.

Alterations and additions to existing dwelling house including a swimming pool and associated works

(2FA) Despite subclause (2), the maximum height for a secondary dwelling or a rural worker's dwelling in Zone E4 Environmental Living or Zone RU2 Rural Landscape is 5.5 metres if the secondary dwelling or rural worker's dwelling is separate from the principal dwelling.

(2FB) Despite subclause (2), in the case of a dual occupancy (detached), the maximum height for the dwelling that is furthest back from the primary street frontage of the lot is 5.5 metres.

(2G) In this clause—

***flood planning level** means the level of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metres freeboard, or other freeboard determined by an adopted floodplain risk management plan.*

***floodplain risk management plan** has the same meaning as it has in the Floodplain Development Manual (ISBN 0 7347 5476 0), published in 2005 by the NSW Government.*

Comment: It is acknowledged that the proposed development does not comply with clause 4.3 (2) and accordingly there is a requirement to submit a Clause 4.6 Variation. This Clause 4.6 seeks an exemption to the development standard as prescribed under the PLEP2014 and demonstrates that compliance with the provisions of clause 4.3 (2) is both unreasonable and unnecessary and the proposed development meets the required steps that are set out in the relevant NSW Land and Environment Court decisions to justify that the standard can be varied to achieve the subject proposal.

The development standard in Clause 4.3 (2) of the PLEP2014, is amendable to variation. The purpose of this Clause 4.6 is to vary the Height of Building as a building height referable to the building to give Council the power to grant development consent to the non-compliant purposes. This proposition is reinforced by the following:

Clause 4.3 (2) states:

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

The Height of Building Map sets a maximum Height of Building control of 8.5m. For the purpose of calculating Height of Building, the PLEP2014 provides the following definition:

Building height is defined as follows:

***building height (or height of building)** means—*

(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or

(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

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

It is noted that Northern Beaches Council now refers to the leading case authority which considers the definition of “ground level (existing) *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582, which insists that the ground level (existing) is measured from the **excavated** ground level (within the footprint of the existing building) to the highest point of the proposal directly above. It is noted that the Court accepted (at [74]) that there is an ‘environmental planning ground’ that may justify the contravention of the height standard under ‘clause 4.6’ when the prior excavation of the site (within the footprint of the existing building) distorts the maximum

Alterations and additions to existing dwelling house including a swimming pool and associated works

building height plane. This falls hand in hand with the original leading case *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070.

The Height of Building in clause 4.3(2) of the PLEP2014 is a development standard in accordance with the definition set out below:

Development standards' is defined in section 1.4 of the EP&A Act 1979 as:

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,

Despite the variation to the Height of Building control which occurs as a result of the topography of the land and modified (man-made) components, the proposed development is considered to be in keeping with the desired future character of the locality. The proposal has been strategically designed to minimise the impact and bulk and scale of the project. The project designers have worked tirelessly to design new modern high-end alterations and additions that meet the sites constraints and the existing bulk and scale of the area; therefore, the proposal will not result in any unreasonable visual impact on the Halesmith Road streetscape.

The proposed development has been designed to have minimal impacts on adjoining properties in terms of views, privacy or overshadowing. Therefore, this written submission is considered to be compliant with the Statutory Provisions prescribed both under PLEP2014 and the provisions of Clause 4.6 which permit a variation to a development standard. It is noted it is consistent with the approval granted through the case *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582 is that the distorted height plane creates reasonable environmental planning ground that justifies the contravention of the height standard.

Objection to Development Standard – Height of Building (Clause 4.3(2))

Compliance being unreasonable or unnecessary

1. Compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the stand: *Wehbe v Pittwater Council* at [42] and [43].

Comment: Clause 4.6(3)(a) of the PLEP2014 states that the proposed variation to the development standard must demonstrate that compliance with the development standard is 'unreasonable or unnecessary in the circumstances of the case'.

In determining a merits-based assessment for the Height of Building of the development due consideration has been given to the above objectives and the planning principles set by the Land and Environment Court of NSW, Planning Principle – *Veloshin v Randwick Council* [2007] NSWLEC 428.

It is acknowledged that the purpose of Clause 4.6 is to provide an appropriate degree of flexibility in applying certain development standards. In this regard the Height of Building of the site should be assessed on a greater numerical figure, noting the sites constraints and the unique nature of the

Alterations and additions to existing dwelling house including a swimming pool and associated works

locality in a varying degree of development types. Given the proposed application is minor and consistent with similar approvals granted in the area, Council's assessment should be focused on this numerical allowance as opposed to the variation to the specific standard. By providing flexibility in this regard, the subject proposal is capable of achieving a better development and design outcome which adequately caters for residential needs within the Northern Beaches LGA in particular the Bayview precinct. As noted under the review of Clause 4.3 within the Statement of Environmental Effects, the proposal is consistent with the objectives of Clause 4.3, as outlined below:

- The objectives of the PLEP2014 Height of Building control are achieved notwithstanding the technical non-compliance.
- The objectives of the PLEP2014 C4 Environmental Living zone are achieved notwithstanding the technical non-compliance.
- The compliance with the development standard is both unreasonable and unnecessary.
- There are sufficient environmental planning grounds to support the proposed variation.
- The site has a moderate topography and slopes from the front to the rear of the site. The resulting constraints from the topography of the site contribute the minor variation in the building height.
- The proposal is consistent with the existing bulk and scale of the area.
- The proposal has no adverse impacts to views or view corridors, as redevelopment of the site is permissible and the principles of tenacity are achieved.
- The proposal does not adversely impact existing solar access to private and public places. It is noted that the project designer has created alterations and additions that do not adversely impact neighbours while addressing the sites constraints such as the topography.
- The breach to the building is minimal relating to the introduction of a lift and associated terrace on the first floor.
- The breach in building height will not be noticeable and will have no adverse impacts on neighbouring properties. The proposal will not result in a building of an unacceptable bulk and scale.

As outlined above, the proposed development is consistent with the underlying objectives of the Height of Building standard, notwithstanding the proposed variation. Given the modified state of the site, through this application the permissible Height of Building control does not align with the permissible height on the site, nor several built form controls of the PDCP. This essentially limits any redevelopment potential of the site without varying Council's standard.

2. The underlying objective or purpose of Clause 4.3 is not relevant to the development with the consequence that compliance is unnecessary. *Wehbe v Pittwater Council at [45]*

Comment: In determining the building heights of the development, it is important to understand the definitions of building height and ground level (existing) and also relevant case law from the NSW Land and Environmental Court. The following is pertinent to the assessment of the proposed building heights for this development:

Building height is defined as follows:

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

Ground level existing is defined as follows:

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

Alterations and additions to existing dwelling house including a swimming pool and associated works

The court now considers the definition of “ground level (existing)” *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582, which insists that the ground level (existing) is measured from the **excavated** ground level (within the footprint of the existing building) to the highest point of the proposal directly above. It is noted that the Court accepted (at [74]) that there is an ‘environmental planning ground’ that may justify the contravention of the height standard under ‘clause 4.6’ when the prior excavation of the site (within the footprint of the existing building) distorts the maximum building height plane. This falls hand in hand with the original leading cases *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070 and *Stamford Property Services Pty Ltd v City of Sydney & Anor* [2015] NSWLEC 1189.

It is noted that common-sense should prevail from the new court case “Merman Investments Pty Ltd” with the fact that many height planes are now going to be distorted creating an argument which goes hand in hand with the original court cases relating to the extrapolated levels of a site through ‘Bettar’.

As a result of the above, it is determined that the maximum building above ground level (existing) is 9.925m for the proposed alterations and additions. This results in a 1.425m variation or 16.76%. This is a result of the existing building structures on the land which prove that the site has been modified to its current form and measured through the definition of ground level (existing). It is noted that if a natural ground level line was implemented, the structure would comply with the maximum building height control with a maximum 8m height.

The proposed minor breach relates to one portion of the dwelling only, which is dictated by the provision of the lift structure in an area that can access the existing and proposed floors for the dwelling. This also includes the parapet area for the first-floor terrace in which the lift will sit for the first floor. It is submitted that the proposal is consistent with the varying building heights of Halesmith Road and Rednal Street. The minor breach is outlined below and shown on the following pages through plan excerpts:

- First Floor Lift/Terrace Roof- 8m (to natural ground) or 9.925m (to exist ground)

As a result of the above, the application now proposes a variation to Clause 4.3 Height of Buildings. The review above allows a thorough analysis of the objectives of Clause 4.3, which confirms that the proposal is consistent with the objectives of the zone, as outlined below:

(a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,

The site is located within an area identified within A4.9 Mona Vale Locality which outlines the desired character of the area. The desired character statement of A4.9 Mona Vale locality is provided below:

Desired Character

The Mona Vale locality will contain a mix of residential, retail, commercial, industrial, recreational, community, and educational land uses.

Existing residential areas will remain primarily low-density with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape. Secondary dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations. Any dual occupancies will be located on the valley floor and lower slopes that has less tree canopy coverage, species and habitat diversity and fewer other constraints to development. Any medium density housing will be located within and around commercial centres,

Alterations and additions to existing dwelling house including a swimming pool and associated works

public transport and community facilities.

Retail, commercial and light industrial land uses will be employment-generating. The Mona Vale commercial centre status will be enhanced to provide a one-stop convenient centre for medical services, retail and commerce, exploiting the crossroads to its fullest advantage and ensuring its growth and prosperity as an economic hub of sub-regional status. The permissible building height limit is increased to promote economic growth within the centre. The Mona Vale Hospital, as a regional facility servicing the Peninsula, is an essential part of the future local economy.

Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport.

Future development will maintain a building height limit below the tree canopy and minimise bulk and scale. Existing and new native vegetation, including canopy trees, will be integrated with the development. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards.

The design, scale and treatment of future development within the Mona Vale commercial centre will reflect principles of good urban design. Landscaping will be incorporated into building design. Outdoor cafe seating will be encouraged.

Light industrial land uses in Darley and Bassett Streets will be enhanced as pleasant, orderly, and economically viable areas.

A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, and to enhance wildlife corridors.

Heritage items and conservation areas indicative of the Guringai Aboriginal people and of early settlement in the locality will be conserved.

Vehicular, pedestrian and cycle access within and through the locality will be maintained and upgraded. Improved public transport, pedestrian accessibility and amenity, carparking and an efficient surrounding local network will support the commercial centre, moving people in and out of the locality in the most efficient manner. The design and construction of roads will manage local traffic needs, minimise harm to people and fauna, and facilitate co-location of services and utilities.

After reviewing the desired character statement, it is my professional opinion that the building by virtue of its height, bulk and scale, is consistent with the locality and desired character of the area. The following is noted to support my opinion:

- Notwithstanding the minor building height breaches to the dwelling, the Mona Vale locality will remain a low-density residential area for dwelling houses, noting the proposed 2 and 3 storey dwelling with this application and the existing 2 to 4 storey bulk and scale surrounding the site along Halesmith Road and Rednal Street.
- The building height breach is located on the rear of the first floor being the lift core and terrace parapet. The dwelling then steps down with the sites topography noting the first floor has a rear setback of approximately 35m to the terrace.

- As a result of the above, I have formed the considered opinion that the project is a sympathetic design and development with a bulk and scale consistent with the existing and future character of the area. It is also noted that most observers would not find the proposed development by virtue of its height and scale, in particular the building height breaching elements, offensive, or unsympathetic in a streetscape context nor the context from Pittwater.

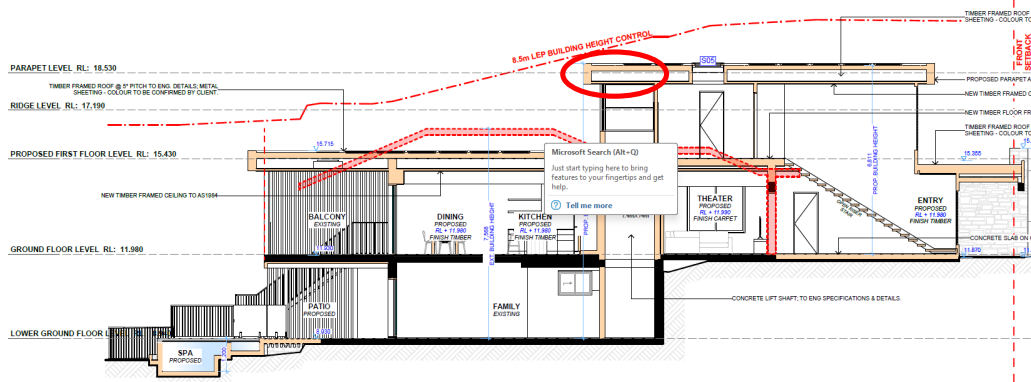
(b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,

It is also important to note that the height at the front of the dwelling is 7m being 1.5m below the maximum height allowance, as per the excerpt below, which also shows full compliance with the side boundary envelope for that part of the dwelling.



Alterations and additions to existing dwelling house including a swimming pool and associated works

The variation is also for a length of 2.55m only, noting if it was taken from the natural ground level, that been the natural state of the site prior to man-made changes it would be compliant.



It is my professional opinion that the proposal is consistent and compatible with the height and scale of the surrounding and nearby development. The proposal is of a bulk and scale acceptable for the area, noting the increased and varied side setbacks to ensure modulation and articulation to the dwelling. The proposal has been designed to be compatible with the existing streetscape while accommodating a bulk and scale that is complementary to the natural environment. The proposal is consistent with this objective.

(c) to minimise any overshadowing of neighbouring properties,

The proposal has been designed to minimise any overshadowing impacts to the adjoining properties. It is my opinion that sufficient access to sunlight is retained noting the north-south orientation of the lots and northerly aspect for the main living areas and private open space for the site and adjoining properties. It is my professional opinion that the proposal will not adversely impact neighbouring dwellings access to sunlight requirements. Refer to Shadow Diagrams drawings DA16 to DA18 prepared by Action Plans for full assessment. The proposal is consistent with this objective.

(d) to allow for the reasonable sharing of views,

The site is located in an area with views and view corridors to Pittwater. The proposal has been strategically designed with full compliance to the front of the dwelling with a maximum building height of 7m, more than compliant side setbacks noting 2.93m setback to the western side first floor and 2.639m to the eastern side first floor, and compliance with the side boundary envelope. It is important to acknowledge this dictates any impact to views with the first-floor area to the north then blocked by the permissible components. It cannot then be argued that any variations to the building height or side boundary envelope in other parts of the first floor would impact views.

A view impact assessment was undertaken (refer to drawing prepared by Action Plans) from the first floor of 6 Halesmith Road. The assessment was taken from the first-floor north-west balcony (located off the main bedroom), first floor north-west balcony (located off a secondary living area) and first floor middle balcony (located off the top of the stairs and secondary living area). My analysis of the images is that the proposed development will have moderate impact from the balcony located off the main bedroom but only a minor impact to the balcony located off the secondary living area. As the front of the proposal for 7 Halesmith Road is compliant with the building height, side setback and side boundary envelope and the moderate impact relates to a bedroom balcony only, it would be unreasonable for Council to enforce full compliance with the building height control. An excerpt of the view analysis images are provided below:

Alterations and additions to existing dwelling house including a swimming pool and associated works



Alterations and additions to existing dwelling house including a swimming pool and associated works



PHOTOMONTAGE - VIEW FROM 6 HALESMTIH ROAD - FIRST FLOOR LEVEL MIDDLE BALCONY

Having inspected the site and identified available public and private view lines over and across the site, and also reviewing the view impact assessment, I am satisfied that the proposed dwelling house compliant with building height (for the front portion of the dwelling) and side setbacks for the first floor addition, will not give rise to any unacceptable view loss with a view sharing outcome maintained in accordance with the planning principle established in the matter of Tenacity vs Warringah Council (2004) NSWLEC 140. The proposal is consistent with this objective.

(e) to encourage buildings that are designed to respond sensitively to the natural topography,

The proposed alterations and additions to the dwelling house have been designed to respond to the existing natural topography of the land, while still accommodating a dwelling that is consistent with the bulk and scale of the area. In this regard, the project designers have designed the first floor to the street away for the lower ground level to emulate a dwelling that steps from the foreshore to the street. Whilst there is a minor crossover of 2.55m for the lift core only, the dwelling retains a two-storey built form stepping down the site. On the basis of the above, I am satisfied that the proposal is consistent with this objective.

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

The proposal will enhance the site through a renovated sustainable dwelling which will improve the landscaping of the site and visual impact of the dwelling to the foreshore of Pittwater. The proposal will add value to the natural environment and will be visually pleasing to the surrounding areas. The site is not identified or located close to known heritage items. The proposal is consistent with this objective.

On the basis of the above assessment, the proposal meets the objectives for Clause 4.3.

Alterations and additions to existing dwelling house including a swimming pool and associated works

3. The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable. *Wehbe v Pittwater Council at [46]*

Comment: It would indeed be unreasonable for Council to refuse the development that is proposed by way of a relatively minor variation as the proposal does not have any adverse impacts on the immediate amenity of the area. The development has been designed with the necessary sensitivity to complement existing buildings and the natural landform of the area. There is no adverse visual impact associated with the form and structures proposed.

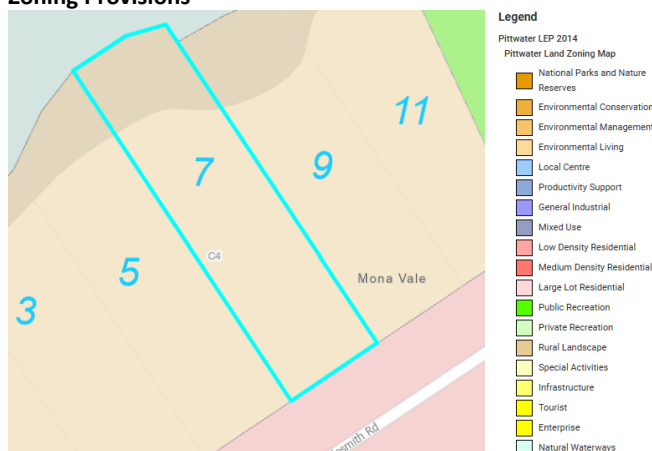
4. The development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the stand is unnecessary and unreasonable: *Wehbe v Pittwater Council at [47]*.

Comment: Whilst the proposal seeks a variation to Councils numerical Height of Building standard, it is consistent with the relevant objectives (as outlined previously in this report).

A review of other developments within the immediate area and approvals granted show that the development standard for Height of Buildings has been virtually abandoned or destroyed by Council's own decisions in granting development consents, hence compliance with this development standard is unnecessary and unreasonable.

5. The relevance of the zoning provisions of the land to which the development is proposed.

Zoning Provisions



Zone C4 Environmental Living

1 Objectives of zone

- To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.
- To ensure that residential development does not have an adverse effect on those values.
- To provide for residential development of a low density and scale integrated with the landform and landscape.

Alterations and additions to existing dwelling house including a swimming pool and associated works

- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

2 Permitted without consent

Home businesses; Home occupations

3 Permitted with consent

Bed and breakfast accommodation; Boat sheds; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Dwelling houses; Environmental protection works; Group homes; Health consulting rooms; Home-based child care; Home industries; Jetties; Oyster aquaculture; Places of public worship; Pond-based aquaculture; Respite day care centres; Roads; Secondary dwellings; Tank-based aquaculture; Water recreation structures

4 Prohibited

Industries; Local distribution premises; Service stations; Warehouse or distribution centres; Any other development not specified in item 2 or 3

The proposed use is defined as follows under PLEP2014:

dwelling house means a building containing only one dwelling.

Note— Dwelling houses are a type of **residential accommodation**—see the definition of that term in this Dictionary.

Comment: The relevance of the zone objectives are assessed below:

Clause 4.6(4)(a)(ii) states that a request for exemption from a development standard must establish that the proposed variation is consistent with both the objectives of the zone and standard.

The site is zoned C4 Environmental Living. A dwelling house and associated works are permissible land uses; therefore, the proposed alterations and additions are permissible with Council's consent. The proposal is consistent with the objectives of the zone, as supported below:

- The proposal provides a low-impact residential development within the Mona Vale locality.
- The proposal encourages the revitalisation and rehabilitation of the existing site while retaining the aesthetic values, ecological aspects of the area.
- The proposal has been strategically designed to sit in the topography of the land to minimise bulk, scale and amenity impacts to adjoining neighbours such as privacy, and access to sunlight.

Sufficient environmental planning grounds

1. First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard"

Comment: Sufficient environmental planning grounds exist to justify the height of buildings variation namely the topography of the land and man-made alterations to the land which take away from the natural elements of the site which makes strict compliance difficult to achieve whilst appropriately distributing height, in the form of legitimate dwelling, on this particular site. Further justification to support the proposed variation is provided below:

- The LEC planning principles on Height of Building relating to the height, bulk and scale, including compatibility between subject buildings and its surrounding context to ensure the

Alterations and additions to existing dwelling house including a swimming pool and associated works

proposal is compatible with its context. The planning principle seeks qualification of the following:

Planning principle: assessment of height and bulk

· The appropriateness of a proposal's height and bulk is most usefully assessed against planning controls related to these attributes, such as maximum height, floor space ratio, site coverage and setbacks. The questions to be asked are:

Are the impacts consistent with impacts that may be reasonably expected under the controls? (For complying proposals this question relates to whether the massing has been distributed so as to reduce impacts, rather than to increase them. For non-complying proposals the question cannot be answered unless the difference between the impacts of a complying and a non-complying development is quantified.)

How does the proposal's height and bulk relate to the height and bulk desired under the relevant controls?

· Where the planning controls are aimed at preserving the existing character of an area, additional questions to be asked are:

Does the area have a predominant existing character and are the planning controls likely to maintain it?

Does the proposal fit into the existing character of the area?

· Where the planning controls are aimed at creating a new character, the existing character is of less relevance. The controls then indicate the nature of the new character desired. The question to be asked is:

Is the proposal consistent with the bulk and character intended by the planning controls?

· Where there is an absence of planning controls related to bulk and character, the assessment of a proposal should be based on whether the planning intent for the area appears to be the preservation of the existing character or the creation of a new one. In cases where even this question cannot be answered, reliance on subjective opinion cannot be avoided. The question then is:

Does the proposal look appropriate in its context?

Note: the above questions are not exhaustive; other questions may also be asked.

In addressing the above planning principals, the benefits of the proposal, represents a new functional dwelling through alterations and additions which enhances the site and blends in with the natural landscape.

From a planning perspective, there is sufficient environmental planning grounds to justify the variation to the Height of Building development standard for the following reasons:

- The objectives of the PLEP2014 Height of Building control are achieved notwithstanding the technical non-compliance.
- The objectives of the PLEP2014 C4 Environmental Living zone are achieved notwithstanding the technical non-compliance.
- The compliance with the development standard is both unreasonable and unnecessary.
- There are sufficient environmental planning grounds to support the proposed variation.
- The site has a moderate topography and slopes from the front to the rear of the site. The resulting constraints from the topography of the site contribute the minor variation in the building height.
- The proposal is consistent with the existing bulk and scale of the area.
- The proposal has no adverse impacts to views or view corridors, as redevelopment of the site is permissible and the principles of tenacity are achieved.
- The proposal does not adversely impact existing solar access to private and public places. It is noted that the project designer has created alterations and additions that do not adversely impact neighbours while addressing the sites constraints such as the topography.

Alterations and additions to existing dwelling house including a swimming pool and associated works

- The breach to the building is minimal relating to the introduction of a lift and associated terrace on the first floor.
- The breach in building height will not be noticeable and will have no adverse impacts on neighbouring properties. The proposal will not result in a building of an unacceptable bulk and scale.

The non-compliance does not result in any unacceptable environmental consequences in terms streetscape, or residential amenity. In this regard, I consider the proposal to be of a skilful design which responds appropriately to the topography and constraints on the site. Such an outcome is achieved whilst realising the reasonable development potential of the land and a functional and usable dwelling.

2. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31]

Comment: This report demonstrates that there is sufficient environmental planning grounds to justify contravening the development standard for Clause 4.3(2). The proposal has assessed the relevant impacts (if any) and has assessed the bulk, scale and mass of the proposed dwelling which will breach the development standard. This report finds that a merit assessment is applicable and determines that there is sufficient grounds to justify the breach to the Height of Buildings. The proposal has been skilfully designed and strategically located to not have an adverse impact to neighbouring properties. Therefore, the development as proposed is sufficiently justified to contravene the development standard.

Is the proposed development in the public interest?

The Consent Authority must be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of:

- a. the particular development standard;
- b. the zone in which the development is proposed to be carried out.

Comment: As demonstrated in this request, the proposed development is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. The proposal is in the public's interest as there is very little public benefit in maintaining the development standard of Height of Building applicable to this site. Additionally, the building improvements add significant social and healthy benefits through a new functional dwelling. Council should encourage such developments via support of positive intention to upgrade sites within the Northern Beaches LGA.

Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

Secretary's Concurrence

Under clause 4.6(5), in deciding whether to grant concurrence, the Secretary must consider the following matters:

Alterations and additions to existing dwelling house including a swimming pool and associated works

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

Comment: The contravention of the development standard will not result in any consequences for State or regional environmental planning.

There would be no public benefit in maintaining the development standard in this instance for the following reasons:

- The variation to the Height of Building development standard does not give rise to any adverse environmental impacts. As such, the maintenance of the development standard in this specific instance would not provide any public benefit and would hinder the orderly and economic development of the site.
- Maintaining the development standard, in the context of this site, would be inconsistent with the objectives of the zone, and the Act, as it would be inconsistent with the surrounding developments.

By Planning Circular dated 5th May 2020, the Secretary of the Department of Planning & Environment advised that consent authorities can assume the concurrence to clause 4.6 request except in the circumstances set out below:

- Lot size standards for rural dwellings;
- Variations exceeding 10%; and
- Variations to non-numerical development standards.

The circular also provides that concurrence can be assumed when an LPP is the consent authority where a variation exceeds 10% or is to a non-numerical standard, because of the greater scrutiny that the LPP process and determinations are subject to, compared with decisions made under delegation by Council staff.

Concurrence of the Secretary can therefore be assumed in this case. There are no other relevant matters required to be taken into account by the Secretary.

Summary and Conclusion

It is therefore submitted that Clause 4.6 is applicable to the subject development in respect to the variation to clause 4.3(2) Height of Building and this statement verifies that compliance with the provisions of clause 4.3(2) would be both unreasonable and unnecessary in the circumstances of this case. The development is consistent with the objectives of Clause 4.6 as per below:

1(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

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

A variation to the strict application of Council's Height of Buildings development standard is considered appropriate for the site at 7 Halesmith Road, Mona Vale.

Alterations and additions to existing dwelling house including a swimming pool and associated works

It is acknowledged that the purpose of Clause 4.6 is to provide an appropriate degree of flexibility in applying certain development standards. In this regard the Height of Building of the site should be assessed on a greater numerical figure, noting the sites constraints and the unique nature of the locality in a varying degree of development types. Given the proposed application is minor in our opinion and consistent with similar approvals granted in the area, Council's assessment should be focused on this numerical allowance as opposed to the variation to the specific standard. By providing flexibility in this regard, the subject proposal is capable of achieving a better development and design outcome which adequately caters for residential needs within the Northern Beaches LGA in particular the Bayview precinct.

The proposed development is consistent with the underlying objectives of the Height of Building standard, notwithstanding the proposed variation. The permissible Height of Building control does not align with the permissible height on the site, nor several built form controls of the PDCP2014. This essentially limits any redevelopment potential of the site without varying Council's standards.

It is therefore submitted that the non-compliance with the Height of Building Clause 4.3(2) is acceptable, and flexibility should be exercised by Council as a better outcome is achieved for the site and the immediate locality. It is noted the assessment has been undertaken in relation to the most recent court case *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582. The variation under Clause 4.6 is to vary the Height of Building control to give Northern Beaches Council the power to grant development consent to the proposed development.

ITEM 3.4	DA2023/1365 - 28 SUNRISE ROAD PALM BEACH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
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PURPOSE

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

RECOMMENDATION

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of PLEP 2014 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **refuses** Development Consent to DA2023/1365 for Alterations and additions to a dwelling house on land at Lot 145 DP 6937, 28 Sunrise Road PALM BEACH, for the reasons for refusal set out in the Assessment Report.

REPORTING MANAGER	Adam Richardson
TRIM FILE REF	2024/080541
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/1365
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Responsible Officer:	Stephanie Gelder
Land to be developed (Address):	Lot 145 DP 6937, 28 Sunrise Road PALM BEACH NSW 2108
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	John Ingham Frances Ingham
Applicant:	Jose Ignacio Ortiz-Munoz

Application Lodged:	11/10/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	17/10/2023 to 31/10/2023
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.3 Height of buildings: 35.29%
Recommendation:	Refusal

Estimated Cost of Works:	\$ 2,237,460.00
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EXECUTIVE SUMMARY

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

The application is referred to the Development Determination Panel (DDP) due to a variation greater than 10% to building height within the Pittwater Local Environment Plan 2014 (PLEP 2014). The application has not been accompanied by a written Clause 4.6 variation request, despite the issue of non-compliant building height being raised with the applicant during assessment.

During the notification period 2 submissions were received. Concerns raised in the submissions predominantly relate to stormwater, visual privacy, acoustic privacy, whether the development

constitutes 'Alterations and Additions', side building line, and breach of the building envelope.

Despite amendment to the development, the extent of works represent an excessive building height, excessive bulk and scale and built form which has unacceptable privacy impacts.

Critical assessment issues include Clause 4.3 Height of buildings of PLEP 2014, Zone C4 Environmental Living of PLEP 2014, Clause A4.12 Palm Beach Locality of Pittwater 21 Development Control Plan (P21 DCP), Clause B5.15 Stormwater of P21 DCP, C1.5 Visual Privacy of P21 DCP, Clause D12.6 Side building line, and Clause D12.8 Building envelope of P21 DCP. These issues will form the reasons for the recommendation of refusal.

This report concludes with a recommendation that the DDP refuse the development application.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development comprises of the following works:

This application proposes the partial demolition of the existing dwelling to facilitate alterations and additions. Specifically, the works propose the following:

Basement Studio Level (RL 42.290)

- Gym, sauna and bathroom;
- Hallway providing access to internal lift;

Lower Ground Floor (RL 45.380)

- Additions include new pantry, storage, laundry, powder room and cellar;
- New spiral staircase to replace existing;
- New rear facing terrace. New courtyard associated with the entryway and can be accessed from the study/sitting room;
- New glazing;

Ground Floor (RL: 49.045)

- Alterations to existing garage;
- Relocation of carport;
- New entry porch;
- Internal reconfigurations to create WIR and ensuite in master bedroom. Bed 2 and 3 also proposed ensuites;
- Spiral staircase to the northern boundary to provide access to the first floor level;
- Planter box feature in the north west corner;
- Smaller spiral staircase next to the main providing access to the roof terrace;

First Floor

- Roof terrace (RL 52.550);
- Bedroom with ensuite (RL 51.140); and

Roof (RL: 54.739)

- New roof.

The amended plans submitted on 5 December 2023, include the following changes:

- Reduction of excavation on Basement Studio Level;
- Relocation of internal lift;
- Internal alterations;
- Alterations to roof top terrace including relocation of access stairs; and
- Reduction of garage and entry length.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living
 Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings
 Pittwater 21 Development Control Plan - A4.12 Palm Beach Locality
 Pittwater 21 Development Control Plan - B5.15 Stormwater
 Pittwater 21 Development Control Plan - C1.5 Visual Privacy
 Pittwater 21 Development Control Plan - C1.6 Acoustic Privacy
 Pittwater 21 Development Control Plan - C1.23 Eaves
 Pittwater 21 Development Control Plan - C1.24 Public Road Reserve - Landscaping and Infrastructure
 Pittwater 21 Development Control Plan - D12.3 Building colours and materials
 Pittwater 21 Development Control Plan - D12.5 Front building line
 Pittwater 21 Development Control Plan - D12.6 Side and rear building line
 Pittwater 21 Development Control Plan - D12.8 Building envelope
 Pittwater 21 Development Control Plan - D12.10 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 145 DP 6937 , 28 Sunrise Road PALM BEACH NSW 2108
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the eastern side of Sunrise Road.</p> <p>The site is irregular in shape with a frontage of 17.375m along Sunrise Road and a depth of 49.530m. The site has a surveyed area of 997.1m².</p> <p>The site is located within the C4 Environmental Living zone from PLEP 2014 and accommodates a dwelling house, attached garage, detached carport, swimming pool, and sauna currently on the site.</p> <p>The site slopes from the front western boundary steeply downwards to the rear eastern boundary over approximately 20 metres.</p> <p>The site contains gardens, trees, and dense vegetation at the rear of the site.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by one and two storey dwelling houses varying in architectural style and design. To the west of the site, on the opposite side of Sunrise Road is Sunrise Reserve.</p>

Map:



SITE HISTORY

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

N0034/08

Development Application for Alterations and additions to the dwelling.
Approved on 22 July 2008.

BC0117/13

Building Certificate for A two and three storey sole occupancy rendered dwelling with a metal roof together with a semi inground pool, timber deck and metal carport.
Approved on 28 January 2014.

APPLICATION HISTORY

Following the preliminary assessment of the application, Council requested additional information on 6 November 2023 in relation to Clause 4.3 Height of Buildings of Pittwater Local Environmental Plan 2014, Clause 7.2 Earthworks of Pittwater Local Environmental Plan 2014, Clause B8.1 Construction and Demolition - Excavation and Landfill of Pittwater 21 Development Control Plan, and Clause C1.6 Acoustic Privacy of Pittwater 21 Development Control Plan. Further information was requested from Council's Development Engineer in relation to parking and access, and stormwater. Council's Landscape Officer requested further information in relation to proposed tree removal, and a proposed landscape plan. Council's Bushland and Biodiversity Officer requested further information in relation to proposed tree removal.

The applicant requested an extension to provide additional information on 4 December 2023. The extension of time was granted by Council.

On 5 December 2023, the applicant submitted additional information including amended Master Plans, amended Stormwater Plans, amended Landscape Plans, amended Geotechnical Report, and a OSD Checklist Report.

The changes made to the plans included the following:

- Reduction of excavation on Basement Studio Level;
- Relocation of internal lift;
- Internal alterations;
- Alterations to roof top terrace including relocation of access stairs; and
- Reduction of garage and entry length.

It is important to note, that there were no changes made to the height of buildings non-compliance, and no written Clause 4.6 was submitted.

The amended plans constitute a reduced environmental impact and therefore, the application was not required to be re-notified, in accordance with the Northern Beaches Community Participation Plan (CPP).

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p>Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters are capable of being addressed via a condition of consent, should the development be approved.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to Clause 4.3 Height of Buildings of Pittwater Local Environmental Plan 2014, Clause 7.2 Earthworks of Pittwater Local Environmental Plan 2014, Clause B8.1 Construction and Demolition - Excavation and Landfill of Pittwater 21 Development Control Plan, and Clause C1.6 Acoustic Privacy of Pittwater 21 Development Control Plan. Further information was requested from Council's Development Engineer in relation to parking and access, and stormwater. Council's Landscape Officer requested further information in relation to proposed tree removal, and a proposed landscape plan. Council's Bushland and Biodiversity Officer requested further information in relation to proposed tree removal.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter is capable of being addressed via a condition of consent, should the development be approved.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent</p>

Section 4.15 Matters for Consideration	Comments
	<p>authority to consider insurance requirements under the Home Building Act 1989. This matter is capable of being addressed via a condition of consent, should the development be approved.</p> <p>Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter is capable of being addressed via a condition of consent, should the development be approved.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant requirement(s) of Clause 4.3 Height of buildings of Pittwater Local Environmental Plan 2014, and Clause 4.6 Exceptions to development standards of Pittwater Local Environmental Plan 2014 and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 17/10/2023 to 31/10/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Mrs Julie Anne Graham	11 Ocean Road PALM BEACH NSW 2108
Campbell Architecture	75 Renwick Street ALEXANDRIA NSW 2015

The following issues were raised in the submissions:

- **Water Management for Development Policy**
- **Visual Privacy**
- **Acoustic Privacy**
- **'Alterations and Additions'**
- **Side Building Line**
- **Building Envelope**

The above issues are addressed as follows:

- **Water Management for Development Policy**

The submissions raised concerns surrounding stormwater and run off management. The submission requests that the proposed development complies with Council's Water Management for Development Policy.

Comment:

As detailed under Clause B5.15 Stormwater of Pittwater 21 Development Control Plan contained within this report, Council's Development Engineer requires further information in relation to the proposed stormwater system. As such, insufficient information has been provided to confirm if the proposed development is compliant with Council's Water Management for Development Policy. Therefore, insufficient information in relation to the proposed stormwater system will form part of the reasons for refusal.

- **Visual Privacy**

The submissions raised concerns surrounding visually privacy as a result of the proposed roof terrace to the adjoining site to the south.

Comment:

A detailed assessment has been conducted under Clause C1.5 Visual Privacy of Pittwater 21 Development Control Plan contained within this report. In summary the proposed roof terrace will result in an unacceptable visual privacy impact. As such, the visual privacy impact will form part of the reasons for refusal.

- **Acoustic Privacy**

The submissions raised concerns surrounding acoustic privacy as a result of the proposed roof terrace to the adjoining site to the south.

Comment:

A detailed assessment has been conducted under Clause C1.6 Acoustic Privacy of Pittwater 21 Development Control Plan contained within this report. In summary the proposed roof terrace is not considered to result in an environment where unacceptable acoustic privacy impact as a result of the physical separation of the proposed development and adjoining development to the south.

- **'Alterations and Additions'**

The submissions raised concerns that the proposed development does not constitute 'Alterations and additions' and is inconsistent with the planning principle established by *Coorey v Municipality of Hunters Hill [2013] NSWLEC 1187*.

Comment:

The proposed development has been assessed against the relevant development standards of the LEP and DCP,. The applicable development controls that are universal to all development applications and are not distinguishable between adds / alts development and new builds. As the relevant development standards, and controls are universal to any proposed development, there are no concessions applicable for an alteration or addition proposal. As such, the proposed development has been assessed the relevant controls, and it is noted that the inconsistency with the height of buildings development standard, and building envelope control form part of the reasons for refusal.

- **Side Building Line**

The submissions raised concerns that the southern wall is non-compliant with the required side setback.

Comment:

A detailed assessment has been conducted under Clause D12.6 Side and rear building line of Pittwater 21 Development Control Plan contained within this report. In summary, the proposed side building variation to the roof terrace is not supportable, and the variation will form part of the reasons for refusal.

- **Building Envelope**

The submissions raised concerns that the proposal is non-compliant with the building envelope control.

Comment:

A detailed assessment has been conducted under Clause D12.8 Building envelope of Pittwater 21 Development Control Plan contained within this report. In summary, the proposed building envelope variation is not supportable, and the variation to the building envelope control forms part of the reasons for refusal.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p><i>Supported - subject to conditions</i></p> <p>Council's Landscape Referral is assessed against the Pittwater Local Environment Plan (PLEP) clause C4 zone Environmental Living, and the following Pittwater 21 Development Control Plan (PDCP) controls (but not limited to):</p> <ul style="list-style-type: none"> • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • D12 Palm Beach Locality <p>The site is located in the C4 Environmental Living zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment with ecological, scientific or aesthetic values, including the retention of natural landscape features and existing trees, to satisfy the landscape objectives of the C4 Environmental Living zone.</p> <p>Amended plans are submitted and the previous landscape referral concerns are addressed and no concerns are raised with the design of the landscape proposal.</p>
NECC (Bushland and Biodiversity)	<p><i>Supported - subject to conditions</i></p> <p>AMENDED COMMENTS</p> <p>Amended master plans and an amended landscape plan have been submitted with the application.</p> <p>The proposed landscape plan no longer includes species identified as weeds and is found to be compliant with PDCP B4.17.</p> <p>Additionally, the plans show that trees previously shown to be removed in Council's road reserve are now being retained.</p> <p>No objections are raised and conditions are recommended for the control of WONS found on site.</p> <p>The development is designed, sited and will be managed to avoid any significant adverse environmental impact.</p> <p>ORIGINAL COMMENTS</p> <p>The proposal seeks approval for alterations and additions to a dwelling house.</p> <p>The comments in this referral relate to the following applicable controls and provisions:</p> <ul style="list-style-type: none"> • SEPP (Resilience and Hazards) 2021 - Coastal Environment Area • Pittwater LEP - Clause 7.6 Biodiversity Protection • Pittwater DCP 21 - Clause B4.17 Littoral Rainforest - Endangered Ecological Community

Internal Referral Body	Comments
	<p>The proposal has been submitted with a Flora and Fauna Assessment that has concluded that the proposal would not have a significant impact on native flora and fauna. A range of Weeds of National Significance (WONS) have been identified on site and their removal should be conditioned if the proposal is to be approved.</p> <p>A landscape plan has been submitted with the application and will have to be amended in order to be compliant with PDCP B4.17 as only 60% of the plants included are native and the requirement under PDCP B4.17 is to include a ratio of at least 80% native to exotic. <i>Cupaniopsis anacardioides</i> (Tuckeroo) will have to be replaced with a suitable native alternative as the species has been recognised for having a weedy potential.</p> <p>Additionally, an Arboricultural Impact Assessment (AIA) has been submitted with the application. The condition of a total of 12 trees has been assessed and the removal of 5 trees has been recommended (T1, T2, G3, T5 and T7). Objections are raised as all trees proposed for removal are found in the Council Road Reserve. As per the Landscape Referral these trees should be retained as no impacts from the proposed works would take place.</p>
NECC (Development Engineering)	<p><i>Unsupported - The proposal is unacceptable</i></p> <p>The proposal is for alterations and additions to the existing dwelling.</p> <p><u>Parking and Access</u></p> <p>No works are proposed to the existing vehicular crossing. The existing parking is provided within a carport along the northern end of the front boundary and with the current setbacks it appears that vehicles can enter and exit the site in a forward direction. However, the proposal involves extending the front of the dwelling which effectively reduces the turning area available for cars to exit from the carport in a forward manner. The applicant is to provide turning paths to demonstrate how vehicles can enter and exit the site from the carport in a forward manner.</p> <p><u>Stormwater</u></p> <p>The submitted stormwater plans are unsatisfactory. The site falls to the rear and as such the stormwater management shall be in accordance with Section 5.5 of Council's Water Management for Development Policy. All stages of the Section are to be considered. The geotechnical report states that absorption is not viable for the site. Where an interallotment easement is not viable and a Level Spreader design is considered, the design shall be in accordance with Appendix 4. Total site discharge including bypass flows and controlled flows through the level spreader must not exceed the 20% AEP state of nature storm event.</p> <p>The geotechnical report by Crozier Geotechnical Consultants, dated 16/10/2023 provides recommendations as follows:</p>

Internal Referral Body	Comments																																				
	<p><i>"It is considered that a level spreader in conjunction with OSD to maintain 'Low' flow rates is the most suitable. The spreader is best placed in an area of shallow soil and where limited soils exist downslope. CGC should be consulted following initial design to assess the proposed system and its placement."</i></p> <p>Hence the stormwater plans are to be amended to provide a design in accordance with Appendix 4. The Geotechnical engineer to provide concurrence of the proposed design, discharge rates for all storms and the location of the spreader prior to further assessment.</p> <p>Additional Information Provided on 5/12/2023 The architectural plans have been amended to maintain the existing setback of the front of the dwelling which allows for vehicles to exist the site in a forward manner. This addresses the concerns raised previously.</p> <p>The amended stormwater plans proposing discharge to a level spreader via an OSD is acceptable subject to conditions. However the concurrence requested from the Geotechnical engineer for the proposed stormwater design has not been provided.</p> <p>The Applicant is to provide concurrence of the proposed stormwater design by ITM Design, dated 4/12/2023 including discharge rates for all storms and the location of the spreader from the Geotechnical engineer prior to further assessment.</p>																																				
Strategic and Place Planning (Heritage Officer)	<p>Supported - without conditions</p> <table><tr><th colspan="3">HERITAGE COMMENTS</th></tr><tr><th colspan="3">Discussion of reason for referral</th></tr><tr><td colspan="3">The proposal has been referred to Heritage as the subject site is within the vicinity of a heritage conservation area</td></tr><tr><th colspan="3">Sunrise Hill Heritage Conservation Area</th></tr><tr><th colspan="3">Details of heritage items affected</th></tr><tr><th colspan="3">Statement of Significance</th></tr><tr><td colspan="3">The Sunrise Hill Heritage Conservation Area includes the curtilage of a number of historic properties representing the earliest phase of residential development at Palm Beach.</td></tr><tr><th colspan="3">Physical Description</th></tr><tr><td colspan="3">Conservation area includes houses at 50, 52, 54, 56, 58-60,35 and public reserve at summit of Sunrise Hill.</td></tr><tr><th colspan="3">Other relevant heritage listings</th></tr><tr><td>SEPP (Biodiversity and Conservation) 2021</td><td>No</td><td></td></tr><tr><td>Australian Heritage Register</td><td>No</td><td></td></tr></table>	HERITAGE COMMENTS			Discussion of reason for referral			The proposal has been referred to Heritage as the subject site is within the vicinity of a heritage conservation area			Sunrise Hill Heritage Conservation Area			Details of heritage items affected			Statement of Significance			The Sunrise Hill Heritage Conservation Area includes the curtilage of a number of historic properties representing the earliest phase of residential development at Palm Beach.			Physical Description			Conservation area includes houses at 50, 52, 54, 56, 58-60,35 and public reserve at summit of Sunrise Hill.			Other relevant heritage listings			SEPP (Biodiversity and Conservation) 2021	No		Australian Heritage Register	No	
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Internal Referral Body	Comments		
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	
	Consideration of Application		
	<p>The proposal seeks consent for alterations and additions to an existing dwelling. The heritage conservation area is located opposite the property across Sunrise Road and includes the bushland reserve. As the property sits down below the road level the proposed changes are not considered to impact upon the heritage conservation area or its significance.</p> <p>Therefore Heritage raises no objections and requires no conditions.</p> <p>Consider against the provisions of CL5.10 of PLEP.</p> <p>Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No</p>		

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.A469361_02 dated 25 September 2023).

A condition could be recommended requiring compliance with the commitments indicated in the BASIX Certificate, if the development were to be approved.

SEPP (Transport and Infrastructure) 2021Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021**Chapter 2 – Coastal Management**

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

Division 4 Coastal use area**2.11 Development on land within the coastal use area**

- 1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
 - a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - i) existing, safe access to and along the foreshore, beach, headland or rock
 - ii) platform for members of the public, including persons with a disability,
 - iii) overshadowing, wind funnelling and the loss of views from public places to
 - iv) foreshores,
 - v) the visual amenity and scenic qualities of the coast, including coastal headlands,

Aboriginal cultural heritage, practices and places,
cultural and built environment heritage, and

- b) is satisfied that:
 - i) the development is designed, sited and will be managed to avoid an
 - ii) adverse impact referred to in paragraph (a), or
 - iii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The subject site is located within land identified as "coastal use area". The proposed development is not likely to cause an adverse impact to items listed under Clause 2.11(1)(a)(i-v) inclusive. The proposal has been designed, sited, and managed to avoid any adverse impacts as detailed under Clause 2.11(1)(a)(i-v) inclusive.

Division 5 General

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

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

Comment:

The proposed development is not likely to cause an increased risk of coastal hazards on the land or other land.

2.13 Development in coastal zone generally—coastal management programs to be considered

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Comment:

There is no certified coastal management program applicable to the land.

As such, it is considered that the application does not comply with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

Chapter 4 – Remediation of Land

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

Pittwater Local Environmental Plan 2014

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	No

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	11.5	35.29% (3.0m)	No

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment**Zone C4 Environmental Living**

The subject site is located in Zone C4 Environmental Living of Pittwater Local Environmental Plan 2014.

The proposal has been assessed against the objectives of zone as detailed below:

- ***To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.***

Comment:

The proposal will present as a high-impact residential development as a result of the proposed variation to the height of buildings, and variations to the building envelope, and side building line controls. It is considered the development is inconsistent with aesthetic values as a result of the excessive height, scale, and unreasonable bulk of the development. As such, it is considered that the proposed development is inconsistent with providing a low-impact residential development

The proposed development does not satisfy this objective.

- ***To ensure that residential development does not have an adverse effect on those values.***

Comment:

The residential development will result in an adverse effect on the aesthetic values presented by the proposed height of buildings breach, and non-compliance with the building envelope control and side building line control. The proposed development will not result in any adverse effects to the special ecological, or scientific values.

The proposed development does not satisfy this objective.

- ***To provide for residential development of a low density and scale integrated with the landform and landscape.***

Comment:

The proposal will provide a residential development that is not considered to be of a low density and scale, as a result of the variation to the height of buildings development standard, and building envelope control. The proposal presents a density and scale that is considered to be an excessive scale as a result of the significant building envelope breach, and lack of articulation. The proposed building height will unreasonably extend beyond the existing canopy tree level, that will result in a development that does not integrate appropriately with the landscape. Overall, it is considered that the proposed development will not integrate with the landform, and landscape by virtue of the unacceptable height variation, and building envelope variation.

The proposed development does not satisfy this objective, and will form part of the reasons for refusal.

- ***To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.***

Comment:

The development will not impact upon any riparian, foreshore vegetation, or wildlife corridors.

The proposed development satisfies this objective.

4.3 Height of buildings

The proposed development presents a maximum height of 11.5m, presenting a variation of 35.29% (3.0m) to the required 8.5m development standard (see Figure 1) of Clause 4.3 Height of buildings of Pittwater Local Environmental Plan 2014 (PLEP 2014).

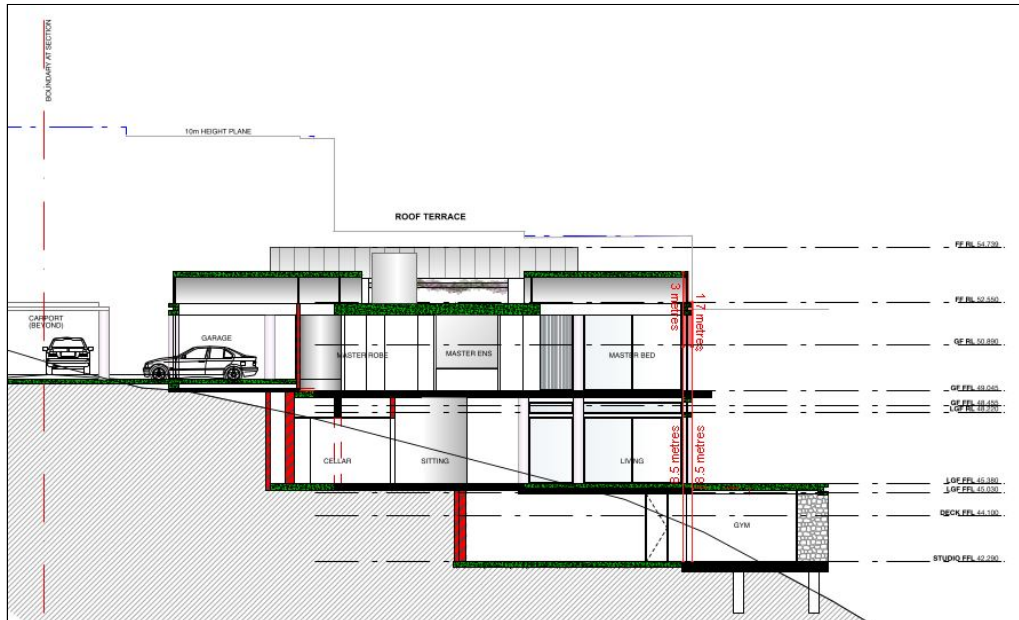


Figure 1. Section BB (red highlighting height of building non-compliance)

During the assessment of the application, the applicant was issued a Request for Further Information of 6 November 2023, detailing the following:

*The required maximum height of buildings of 8.5m. The proposal presents a variation to the maximum height of buildings development standard.
It is noted that Clause 4.3(2D) may be applicable, allowing a maximum of 10.0m.*

However, in accordance with the building height definition under PLEP 2014:

building height (or height of building) means—

- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or
- (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

Furthermore, ground floor (existing) is defined under PLEP 2014 as:

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

In accordance with the caselaw via the NSW Land and Environment Court (Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582, the height is to be measured from the ground floor (existing) on site. Therefore, the height plane presented is incorrect as this plane is an extrapolation of the previous natural ground level.

The maximum height of buildings is required to be taken from the ground level (existing) at any point. This includes the existing finished floor level of the gym area, and existing floor levels of the dwelling house. Therefore, the height plane demonstrated on the plans is to be amended to reflect the ground floor (existing).

Amended plans are required to demonstrate compliance with the maximum height of 10.0m.

It is important to note, that the application may have benefited from Clause 4.3(2D) of Pittwater Local Environmental Plan 2014 if the proposed maximum height was no more than 10.0 metres and if the following criteria was met:

(2D) Despite subclause (2), development on land that has a maximum building height of 8.5 metres shown for that land on the Height of Buildings Map may exceed a height of 8.5 metres, but not be more than 10.0 metres if—

(a) the consent authority is satisfied that the portion of the building above the maximum height shown for that land on the Height of Buildings Map is minor, and

(b) the objectives of this clause are achieved, and

(c) the building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%), and

(d) the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.

However, the applicant did not provide any amendments to the height of buildings when amended plans were submitted on 5 December 2023. It is noted that the height planes were adjusted on the amended Master Plans, however the height planes were not amended to reflect the ground level (existing) and were taken from the lower ground floor. Furthermore, a Clause 4.6 was not submitted to justify any contravention to Clause 4.3 Height of buildings of PLEP 2014.

Notwithstanding, it is considered that there are no apparent sufficient environmental planning grounds to contravene the height of buildings development standard under Clause 4.6 Exceptions to development standards of PLEP 2014. However, as a Clause 4.6 was not submitted with the development application, Council can not be satisfied that compliance with the development standard is unreasonable or unnecessary in the circumstances, and that there are sufficient environmental planning grounds to justify the contravention of the development standard.

As such, the proposed height of buildings variation will form a reason for refusal.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m (West)	0.1m (Carport) 4.6m (Garage)	1.54% (6.4m) 29.23% (1.9m)	No No
Rear building line	6.5m (East)	10.5m	-	Yes
Side building line	2.5m (South)	Basement Studio Level: 2.1m Lower Ground Floor Level: 0.3m-1.3m Ground Floor Level: 1.4m (Master) & 1.6m (Garage) Level 1: 2.1m (Roof Terrace)	16% (0.4m) 48%-88% (1.2m-2.2m) 36%-64% (0.9m-1.6m) 16% (0.4m)	No No No No
	1m (North)	Basement Studio Level: 0.3m Lower Ground Floor Level: 0.7m Ground Floor Level: 0.1m (Carport) Level 1: 1.5m (Bed 3)	70% (0.7m) 30% (0.3m) 90% (0.9m) -	No No No Yes
Building envelope	3.5m (South)	Outside envelope	45.91% (2.8m)	No
	3.5m (North)	Outside envelope	66% (3.3m)	No

Landscaped area	60% (598.26m ²)	50.24% (500.90m ²) 6% impervious (59.83m ²) Total: 56.24% (560.73m ²)	6.27% (37.53m ²)	No
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Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	No	Yes
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.17 Littoral Rainforest - Endangered Ecological Community	Yes	Yes
B5.15 Stormwater	No	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	No	Yes
C1.6 Acoustic Privacy	No	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	No	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D12.3 Building colours and materials	No	Yes
D12.5 Front building line	No	Yes
D12.6 Side and rear building line	No	No
D12.8 Building envelope	No	No
D12.10 Landscaped Area - Environmentally Sensitive Land	No	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

A4.12 Palm Beach Locality

Under Clause A4.12 Palm Beach Locality of Pittwater 21 Development Control Plan, the following desired character applies:

The Palm Beach locality will remain primarily a low-density residential area with dwelling houses in maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape.

Furthermore, the following statement applies:

Future development will maintain a building height limit below the tree canopy and minimise bulk and scale whilst ensuring that future development respects the horizontal massing of the existing built form.

The proposed development presents as three (3) storeys, and as such is inconsistent with the desired future character of the Palm Beach Locality. However, it is important to note, that the existing dwelling house presents as a three (3) storey dwelling, and therefore the proposed development will not result in any changes to the existing number of storeys on site. However, the presence of the 3 storeys is exacerbated by the proposed development as the additional height sits above the tree canopy that contributes to the bulk and scale of the development.

As such, the inconsistency with the desired character statement will form part of the reasons for refusal.

B5.15 Stormwater

Under Clause B5.15 Stormwater of Pittwater 21 Development Control Plan, the following requirements apply:

Stormwater runoff must not cause downstream flooding and must have minimal environmental impact on any receiving stormwater infrastructure, watercourse, stream, lagoon, lake and waterway or the like.

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

Council's Development Engineer has reviewed the proposal, and has provided comments under the Internal Referrals section of this report.

In summary, Council's Development Engineer is not supportable of the proposal for the following reasons:

The amended stormwater plans proposing discharge to a level spreader via an OSD is acceptable subject to conditions. However the concurrence requested from the Geotechnical engineer for the proposed stormwater design has not been provided.

The Applicant is to provide concurrence of the proposed stormwater design by ITM Design, dated 4/12/2023 including discharge rates for all storms and the location of the spreader from the Geotechnical engineer prior to further assessment.

Therefore, the applicant has not provided sufficient information to demonstrate compliance with Council's Water Management for Development Policy. As such, the insufficient information to confirm compliance with Council's Water Management for Development Policy will form part of the reasons for refusal.

C1.5 Visual Privacy

Description of non-compliance

Concern was raised from No.24-26 Sunrise Road (site located to the south) in relation to the proposed Roof Terrace, and visual privacy.

The submissions detailed the following concerns surrounding the Roof Terrace:

- *is constructed at such an increased height above the existing roof line & tree line that will allow for direct overlooking of the main outdoor entertaining & living/ pool area of No24 from an additional storey positioned at least 940mm above the current upper gutter level*
- *is designed such that there is no outlook to east, north or west - the ONLY OUTLOOK & hence the primary outlook is directly to the south-east which is directly over the No24 main outdoor living area & private open space area*
- *is designed such that gathering is encouraged close to the southern edge of the terrace towards the view.*

The applicant submitted amended plans during the assessment of the application, that relocated the stair access to the roof terrace from the north-eastern area of the roof terrace to the south-western area of the roof terrace. Additionally, the roof terrace area has been reduced, with the retaining wall surrounding the roof terrace widened. The roof terrace is approximately 3.65m at the closest point to the southern side boundary line.

Under Clause C1.5 Visual Privacy of Pittwater 21 Development Control Plan, the controls stipulate the following:

Private open space areas including swimming pools and living rooms of proposed and any existing adjoining dwellings are to be protected from direct overlooking within 9 metres by building layout, landscaping, screening devices or greater spatial separation as shown in the diagram below (measured from a height of 1.7 metres above floor level).

Elevated decks and pools, verandahs and balconies should incorporate privacy screens where necessary and should be located at the front or rear of the building.

Direct views from an upper level dwelling shall be designed to prevent overlooking of more than 50% of the private open space of a lower level dwelling directly below.

It is noted that the private open space including the swimming pool of No.24-26 Sunrise Road is approximately 20m from the proposed roof terrace/ However, due to the elevated nature of the roof terrace, it is considered that the proposed roof terrace will present unacceptable visual privacy impacts to the adjoining site to the south. Mitigating these impacts with screens would exacerbate the height issues otherwise identified as being unacceptable.

It is noted that planting has been included on the roof top terrace, however the supplementary planting is not considered to be sufficient to ensure no adverse privacy impacts will arise to the adjoining site, given the elevated nature, and significant height above the adjoining site.

Merit consideration

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

- ***Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design.***

Comment:

The proposed roof terrace is not considered to provide optimal visual privacy through good design. It is considered that the size of the roof terrace, and location to the south of the proposed development results in unacceptable privacy impacts to the adjoining site to the south. Therefore, the proposed roof terrace is considered unacceptable in its current form, and will form part of the reasons for refusal.

The proposed development does not satisfy this outcome.

- ***A sense of territory and safety is provided for residents.***

Comment:

The proposed roof terrace will result in an unacceptable sense of territory, and safety for the residents of the site located to the south. Therefore, it is considered that the proposed roof terrace will result in unacceptable visual privacy impacts, that are not acceptable and will form part of the reasons for refusal.

The proposed development does not satisfy this outcome.

C1.6 Acoustic Privacy

Description of non-compliance

Concern was raised from No.24-26 Sunrise Road (site located to the south) in relation to the proposed Roof Terrace, and acoustic privacy.

As such, a detailed merit assessment has been conducted as detailed below. It is considered that the proposed Roof Terrace would not result in adverse acoustic impacts, noting that the roof terrace is physically separated by approximately 20m from the built development of the site located to the south.

Merit consideration

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

- **Noise is substantially contained within each dwelling and noise from any communal or private open space areas are limited.**

Comment:

It is considered that any potential noise from the roof terrace would not result in any adverse impacts to the private open space of the adjoining site to the south. The distance from the roof terrace to the swimming pool of the site to the south would not result in unacceptable acoustic impacts.

The proposed development satisfies this outcome.

- **Noise is not to be offensive as defined by the Protection of the Environment Operations Act 1997, including noise from plant, equipment and communal or private open space areas.**

Comment:

It is considered that any noise from the roof terrace would not constitute offensive noise as defined by the *Protection of the Environment Operations Act 1997* as a result of the physical separation from the proposed development, and adjoining development to the south.

The proposed development satisfies this outcome.

C1.23 EavesDescription of non-compliance

Clause C1.23 Eaves of Pittwater 21 Development Control Plan requires dwellings to incorporate eaves on all elevations with a minimum width of 450mm. The proposed secondary dwelling does not include eaves.

The underlying Outcomes of this clause are as follows:

- **Housing that reflects the coastal heritage and character of Pittwater.**
- **Optimise roof forms.**
- **Appropriate solar access and shading is achieved.**

Merit consideration

It is considered that the overall design reflects a dwelling house that is suitable and consistent with the coastal character of Pittwater. The proposal incorporates an arched metal roof and is accompanied by a BASIX Certificate that demonstrates appropriate solar access and appropriate shading will be achieved.

For the reasons outlined above, it is concluded that the outcomes of the clause are achieved and is supported on merit in this particular circumstance.

C1.24 Public Road Reserve - Landscaping and Infrastructure

The original Landscape Plans proposed the removal of trees within Council's Reserve. However, both Council's Landscape Officer, and Council's Bushland and Biodiversity Officer were not supportive of the removal of the trees, and the proposed plantings within the Road Reserve that included exempt species and environmental weed species

Subsequently, the applicant provided amended Landscape Plans that retains the existing trees and plantings within Council's Road Reserve. Therefore, the proposal as amended does not include any works within Council's Road Reserve.

D12.3 Building colours and materials

Clause D12.3 Building colours and materials of Pittwater 21 Development Control Plan stipulates the following:

External colours and materials shall be dark and earthy tones.

As detailed on the Schedule of Finishes on Drawing No.A.00.00 prepared by Burley Katon Halliday dated 23 November 2023, the proposed colours include REN1 - Pink Render.

As observed on the site visit, the dwelling house includes existing Pink Render (see Figure 2).



Figure 2. Site Visit Photo taken 3 November 2023 (facing west)

Therefore, it is considered that whilst the Pink Render does not strictly comply with the required colours, the use of the Pink Render on the proposed colours to match the existing is considered acceptable if the application were to be approved.

D12.5 Front building line

Description of non-compliance

The proposed replacement carport is located 0.1m from the front building line, and the retained garage is located 4.6m from the front building line.

The required front building line is 6.5m, and as such the proposal presents a variation to the required front building line.

Under Clause D12.5 Front building line of Pittwater 21 Development Control Plan, the following variations can be applied:

Where carparking is to be provided on steeply sloping sites, reduced or nil setbacks for carparking structures and spaces may be considered, however all other structures on the site must satisfy or exceed the minimum building line applicable.

It is considered that the site is steeply sloping, and it should be noted that the site sits below the street level of Sunrise Road. Furthermore, the width of Council's Road Reserve is approximately 17m from Sunrise Road to the front boundary line of the site.

It is important to note, that the proposed carport is a replacement of the existing, that is located outside the site boundaries on the Council Road reserve. Therefore, the reconstruction of a the carport to be located wholly within the site boundaries is considered acceptable despite the reduced front building line setback.

The proposal includes the replacement of the southern wall of the garage with breezeblocks, and additional columns, however the existing garage is largely retained in the existing location. Therefore, it is considered the retention of the garage, with the reconstruction of the walls is supportable despite the front building line variation.

Merit consideration

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

- ***Achieve the desired future character of the Locality.***

Comment:

The proposed front setback variation is considered to achieve the desired future character of the Palm Beach Locality.

The proposed development satisfies this outcome.

- ***Equitable preservation of views and vistas to and/or from public/private places.***

Comment:

The proposal will not result in the obstruction of any existing views and vistas to and/or from public and private places.

The proposed development satisfies this outcome.

- ***The amenity of residential development adjoining a main road is maintained.***

Comment:

The subject site does not adjoin a main road. Therefore this outcome is not relevant.

- ***Vegetation is retained and enhanced to visually reduce the built form.***

Comment:

The proposal retains the existing vegetation located within Council's Road Reserve. It is important to note, due to the sloping topography of the site downwards from Sunrise Road street level, the proposed carport, and garage are not visible from the street. Notwithstanding, the proposal includes new plantings within the front setback area as detailed on the accompanying Landscape Plans.

The proposed development satisfies this outcome.

- ***Vehicle manoeuvring in a forward direction is facilitated.***

Comment:

Council's Development Engineer has reviewed the proposal, and is supportable of the vehicular manoeuvring that allows for vehicles to exit the site in a forward manner.

The proposed development satisfies this outcome.

- ***To preserve and enhance the rural and bushland character of the locality.***

Comment:

The proposal will suitably preserve, and enhance the rural and bushland character of the locality with the retained bushland at the rear of the site.

The proposed development satisfies this outcome.

- ***To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.***

Comment:

As detailed above, as the site is located below the street level, the scale and density of the development will be indiscernible from the streetscape due to the steeply sloping topography of the site.

The proposed development satisfies this outcome.

- ***To encourage attractive street frontages and improve pedestrian amenity.***

Comment:

Furthermore, as detailed above, the proposal will not result in any significant changes to the street frontage, as the site is located below the street level. There are no changes to the existing pedestrian amenity.

The proposed development satisfies this outcome.

- ***To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment.***

Comment:

The proposed carport and garage responds to, reinforces, and relates to the spatial characteristics of the existing urban environment.

The proposed development satisfies this outcome.

D12.6 Side and rear building line

Description of non-compliance

Under Clause D12.6 of Pittwater 21 Control Plan (P21 DCP), the control requires development to be setback 2.5m from one side boundary and 1.0m from the other side boundary. For this assessment, the 2.5m control is applied to the southern side boundary and the 1.0m control is applied to the northern side boundary.

The proposed development presents the following southern side setbacks to the required 2.5m control:

- Basement Studio Level: 2.1m
- Lower Ground Floor Level: 0.3m-1.3m
- Ground Floor Level: 1.4m (Master) & 1.6m (Garage)
- Level 1: 2.1m (Roof Terrace)

The proposed development presents the following northern side setbacks to the required 1.0m control:

- Basement Studio Level: 0.3m
- Lower Ground Floor Level: 0.7m
- Ground Floor Level: 0.1m (Carport)
- Level 1: 1.5m (Bed 3)

It is important to note, that the Master Plans are unclear in relation to the southern side wall of Level 1, and the plans do not clearly detail the increased height of the southern wall. Notwithstanding, a merit assessment has been conducted as detailed below.

In this instance, it is considered that the variations to the basement studio level and lower ground floor will not result in any unacceptable impacts, as the setbacks locations will be indiscernible as they will be located beneath the ground. The proposed variation to the garage setback is largely retained as per the existing garage location, and therefore this variation is acceptable. Similarly, the proposed variation

to the carport is acceptable, as the proposed reconstruction of the carport is located wholly within the site boundaries, compared to the existing location that is within Council's Road Reserve. Finally, the variation to the roof terrace is considered unacceptable, given the privacy impacts as a result of the roof terrace.

A detailed merit assessment has been undertaken, and it is considered that the variation to the roof terrace is unacceptable, and this will form part of the reasons for refusal.

Merit consideration

- ***To achieve the desired future character of the Locality.***

Comment:

The proposal presents as a three storey structure, and is considered inconsistent with the desired character of the Palm Beach locality, that stipulates the following, "*Future development will maintain a building height limit below the tree canopy and minimise bulk and scale whilst ensuring that future development respects the horizontal massing of the existing built form*".

The proposed development does not satisfy this outcome.

- ***The bulk and scale of the built form is minimised.***

Comment:

The proposed variation to the side building line for the roof terrace presents an unacceptable bulk and scale that is considered to present an unacceptable built form that is of an excessive bulk and scale.

The proposed development does not satisfy this outcome.

- ***Equitable preservation of views and vistas to and/or from public/private places.***

Comment:

The proposal will not result in any unacceptable view or vista impacts to and from public and private places.

The proposed development does satisfy this outcome.

- ***To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.***

Comment:

As detailed above, the proposal will not result in any unacceptable view sharing outcomes. Notwithstanding, it is considered that the design is not responsive as a result of the proposed roof terrace, and therefore the proposed variation is not supportable.

The proposed development does not satisfy this outcome.

- ***To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.***

Comment:

The proposal will present an unacceptable level of privacy to the adjoining site to the south as

a result of the proposed roof terrace. It is considered that the amenity of the adjoining site to the south will be compromised as a result of the roof top terrace, and therefore the side building line variation is not supportable. The proposed development presents compliance with the solar access requirements to the subject site and adjoining sites.

The proposed development does not satisfy this outcome.

- ***Substantial landscaping, a mature tree canopy and an attractive streetscape.***

Comment:

The proposal is accompanied by Landscape Plans that detail substantial landscaping. It is noted that due to the sloping topography of the site, the development is not visible from the streetscape.

The proposed development does satisfy this outcome.

- ***Flexibility in the siting of buildings and access.***

Comment:

It is noted that the building footprint is largely retained, and therefore for the majority of the side building line variations are considered acceptable. However, the proposed roof terrace is considered to be an inappropriate location that will result in unacceptable privacy impacts, and therefore flexibility is not afforded for the roof terrace.

The proposed development does not satisfy this outcome.

- ***Vegetation is retained and enhanced to visually reduce the built form.***

Comment:

The proposal includes addition of vegetation, and enhanced plantings to assist in visually reduce the built form. However, due to the height of the proposed development, and location of the roof terrace the vegetation will not be sufficient to visually reduce the built form.

The proposed development does not satisfy this outcome.

- ***To ensure a landscaped buffer between commercial and residential zones is established.***

Comment:

The proposal is surrounded by residential zones, therefore this outcome is not relevant in this instance.

D12.8 Building envelope

Description of non-compliance

Clause D12.8 Building envelope of Pittwater 21 Development Control Plan requires buildings to be sited with the following envelope:

Planes are to be projected at 45 degrees from a height of 3.5 metres above ground level (existing) at the side boundaries to the maximum building height.

A review of the Master Plans, and Survey Plan, detail inconsistencies regarding the existing roof, and proposed southern wall. It is noted on the Survey Plan, that the Lip Gutter is 51.61 along the southern roof. On Section CC (Drawing No.A.03.03) of the Master Plans prepared by Burley Katon Halliday dated 23 November 2023 the southern wall is depicted in black as an existing structure. However, it is unclear how this is existing, if the existing roof is below the top of the southern wall. Furthermore, the building envelope plane that was on the original Section CC plan has been deleted from the amended Master Plan Set.

In this instance, the building envelope has been assessed as the worst case scenario, as the proposed, and existing walls are unclear. It is also important to note, the access stairs to the roof terrace have not been amended on Section CC (Drawing No.A.03.03) of the Master Plans prepared by Burley Katon Halliday dated 23 November 2023. It is noted, that the location of the access stairs has not been amended to the west of the proposed roof top terrace.

The proposal presents a variation to the building envelope control along the North Elevation, presenting a maximum variation of 66% (3.3m in height for the length of 12.6m) as depicted in Figure 3.

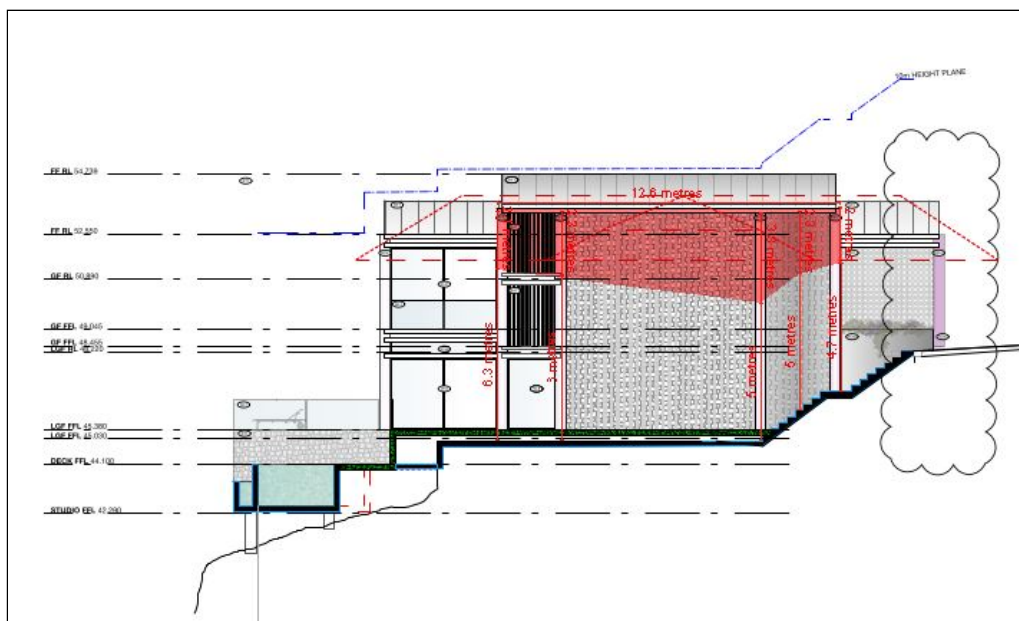


Figure 3. North Elevation (red highlighting numerical building envelope non-compliance)

Under Clause D12.8 Building Envelope of P21 DCP, variations can be made in the following circumstances:

Where the building footprint is situated on a slope over 16.7 degrees (ie; 30%), variation to this control will be considered on a merits basis.

The building footprint along the northern elevation is approximately 28%, and as such the proposal is not subject to the dispensation based on steeply sloping sites.

The proposal presents a variation to the building envelope control along the South Elevation, presenting a maximum variation of 45.90% (2.8m in height for the length of 11.8m) as depicted in Figure 4.

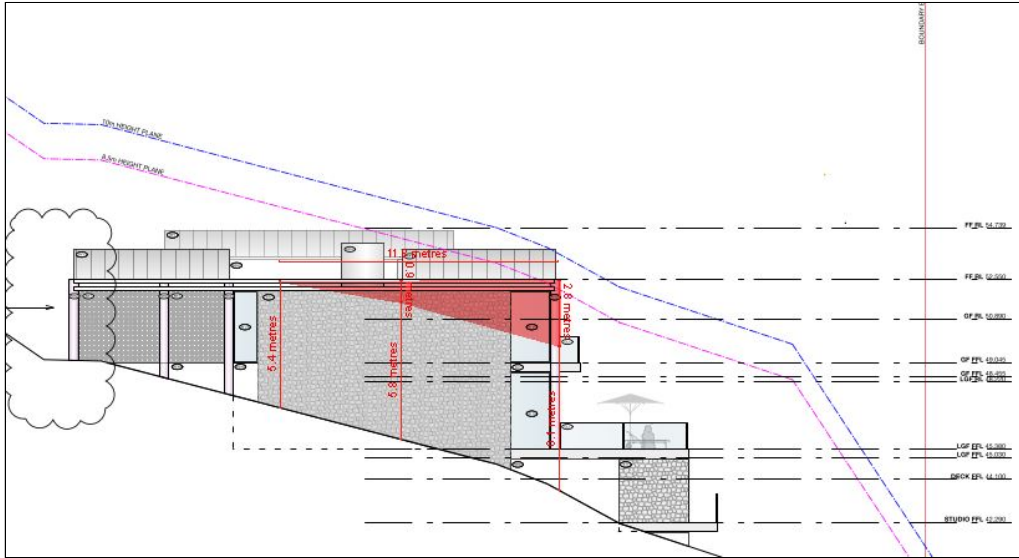


Figure 4. South Elevation (red highlighting numerical building envelope non-compliance)

As detailed above, under Clause D12.8 Building Envelope of P21 DCP, variations can be made in the following circumstances:

Where the building footprint is situated on a slope over 16.7 degrees (ie; 30%), variation to this control will be considered on a merits basis.

The building footprint along the southern elevation is approximately 30%, and as such the proposal is not subject to the variation and considered on a merits basis.

Notwithstanding, it is considered that the proposed building envelope breach is numerical non-compliant, and inconsistent with the outcomes of the control as detailed below. Therefore, the proposed building envelope variation is unsupportable, and will form part of the reasons for refusal.

Merit consideration

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

- **To achieve the desired future character of the Locality.**

Comment:

The proposal presents as a three storey structure, and is considered inconsistent with the desired character of the Palm Beach locality, that stipulates the following, "Future development will maintain a building height limit below the tree canopy and minimise bulk and scale whilst ensuring that future development respects the horizontal massing of the existing built form".

The proposed development does not satisfy this outcome.

- **To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.**

Comment:

The proposal is sited below the street level of Sunrise Road, and as such will not result in any significant changes to the streetscape. Notwithstanding, the proposed development will result in a development above the height of the trees of the natural environment, and is therefore not supportable.

The proposed development does not satisfy this outcome.

- ***To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.***

Comment:

The proposed does not respond appropriately to the spatial characteristics of the existing natural environment, with the proposed development presenting as dominating structure that is overbearing to the existing natural environment.

The proposed development does not satisfy this outcome.

- ***The bulk and scale of the built form is minimised.***

Comment:

The proposed development presents an unacceptable bulk and scale as demonstrated through the building envelope variations. It is considered that the proposal does not include any articulation or varied setbacks to reduce the bulk and scale. Furthermore, it is considered that the proposed roof form further contributes to the bulk and scale of the development, that is considered unacceptable.

The proposed development does not satisfy this outcome.

- ***Equitable preservation of views and vistas to and/or from public/private places.***

Comment:

The proposal will not result in any unacceptable view or vista impacts to and from public and private places.

The proposed development satisfies this outcome.

- ***To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to neighbouring properties.***

Comment:

The proposal will present an unacceptable level of privacy to the adjoining site to the south as a result of the proposed roof terrace. It is considered that the amenity of the adjoining site to the south will be compromised as a result of the roof top terrace. The proposed development presents compliance with the solar access requirements to the subject site and adjoining sites.

The proposed development does not satisfy this outcome.

- ***Vegetation is retained and enhanced to visually reduce the built form.***

Comment:

The proposal includes addition of vegetation, and enhanced plantings to assist in visually reduce the built form. However, due to the height of the proposed development, it is considered the existing and proposed vegetation will not be sufficient to visually reduce the built form.

The proposed development does not satisfy this outcome.

D12.10 Landscaped Area - Environmentally Sensitive Land

Description of non-compliance

Clause D12.10 of Pittwater 21 Development Control Plan requires a minimum of 60% (598.26m²) of the site to be landscaped open space.

The proposal presents a numerically non-compliant landscaped area of 50.24% (500.90m²).

Under Clause D12.10, the following variation is applicable:

- *Provided the outcomes of this control are achieved, the following may be permitted on the landscaped proportion of the site:*
- *impervious areas less than 1 metre in width (e.g. pathways and the like);*
- *for single dwellings on land zoned R2 Low Density Residential or E4 Environmental Living, up to 6% of the total site area may be provided as impervious landscape treatments providing these areas are for outdoor recreational purposes only (e.g. roofed or unroofed pergolas, paved private open space, patios, pathways and uncovered decks no higher than 1 metre above ground level (existing)).*

In this instance, a total of 6% (59.83m²) impervious landscape treatments are provided for outdoor recreational purposes including the rear upper terrace, and lower pool terrace. Therefore, the landscaped area including the 6% impervious area results in a total of 56.24% (560.73m²) with a variation of 6.27% (37.53m²).

It is important to note that the existing building footprint is largely retained, and as such the non-compliance with the landscaped area requirements are consistent with the existing site arrangement. Notwithstanding, the proposal includes the addition of planting, and trees as detailed in the Landscape Plans, and therefore it is considered that the proposal will present an improved landscaped outcome. Furthermore, Council's Landscape Officer, and Council's Bushland and Biodiversity Officer have reviewed the proposal, and are supportable if the application were to be approved.

Overall, the proposed variation has been assessed against the outcomes of the control as detailed below, and it is considered that the proposal has satisfied the outcomes of the control, and as such the variation is acceptable in this circumstance.

Merit consideration

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

- ***Achieve the desired future character of the Locality.***

Comment:

The proposed landscaped area is consistent with the desired future character of the Palm Beach Locality.

The proposed development satisfies this outcome.

- ***The bulk and scale of the built form is minimised.***

Comment:

The proposal presents an unacceptable height of buildings, and as such the height of buildings variation will form part of the reasons for refusal. However, in principal the remainder of the proposed development is considered of an acceptable bulk and scale, albeit at a reduced height.

The proposed development satisfies this outcome.

- ***A reasonable level of amenity and solar access is provided and maintained.***

Comment:

The proposal provides for an acceptable level of amenity and solar access to the subject site, and adjoining sites as detailed in the accompanying Shadow Diagrams.

The proposed development satisfies this outcome.

- ***Vegetation is retained and enhanced to visually reduce the built form.***

Comment:

As detailed on the accompanying Landscape Plans the proposal retains vegetation, and provides enhanced plantings that will assist in visually reducing the built form.

The proposed development satisfies this outcome.

- ***Conservation of natural vegetation and biodiversity.***

Comment:

The proposal conserves the natural vegetation, and biodiversity of the site. Council's Bushland and Biodiversity Officer has reviewed the proposal and is supportable, subject to recommended conditions if the application were to be approved.

The proposed development satisfies this outcome.

- ***Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels.***

Comment:

Council's Development Engineer has reviewed the proposal, and is supportable of the proposed stormwater system. However, Council's Development Engineer requires further information as the concurrence requested from the Geotechnical engineer for the proposed stormwater design has not been provided. This insufficient information will form part of the reasons for refusal.

The proposed development does not satisfy this outcome.

- ***To preserve and enhance the rural and bushland character of the area.***

Comment:

The proposed development preserves and enhances the rural and bushland character of the area. Specifically, the rear dense vegetation is retained to preserve the bushland character.

The proposed development satisfies this outcome.

- ***Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management.***

Comment:

The proposal maximises the soft surfaces to provide for infiltration of water to the water table that will minimise the run-off and subsequently assist with appropriate stormwater management.

The proposed development satisfies this outcome.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$22,375 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,237,460.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and

- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

PLANNING CONCLUSION

This proposal, for alterations and additions to a dwelling house has been referred to Development Determination Panel (DDP) due to a variation greater than 10% to building height within the Pittwater Local Environment Plan 2014 (PLEP 2014). It is important to note, that no Clause 4.6 that has been submitted with the application.

The concerns raised in the objections have been considered and predominantly relate to stormwater, visual privacy, acoustic privacy, whether the development constitutes 'Alterations and Additions', side building line, and building envelope.

The critical assessment issues Clause 4.3 Height of buildings of PLEP 2014, Zone C4 Environmental Living of PLEP 2014, Clause A4.12 Palm Beach Locality of Pittwater 21 Development Control Plan (P21 DCP), Clause B5.15 Stormwater of P21 DCP, C1.5 Visual Privacy of P21 DCP, Clause D12.6 Side building line, and Clause D12.8 Building envelope of P21 DCP. These issues will form the reasons for the recommendation of refusal.

The proposal has therefore been recommended for refusal.

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

RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2023/1365 for the Alterations and additions to a dwelling house on land at Lot 145 DP 6937,28 Sunrise Road, PALM BEACH, for the reasons outlined as follows:

1. **Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.3 Height of buildings of the Pittwater Local Environmental Plan 2014.**

Particulars:

- i. The proposed development presents a non-compliant height of 11.5m that exceeds the

required 8.5m height of buildings development standard.

ii. In the absence of a Clause 4.6 variation request, development consent cannot be granted as no written request has been provided to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the objectives of Zone C4 Environmental Living of the Pittwater Local Environmental Plan 2014.

Particulars:

i. The proposed development is inconsistent with the objectives of zone, specifically as the proposed development is not considered to be of a low density and scale, as a result of the height of buildings variation, and unacceptable variations to the side building envelope, and side building line.

3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause A4.12 Palm Beach Locality of the Pittwater 21 Development Control Plan.

Particulars:

i. The proposal is inconsistent with the requirements of the control of Clause A4.12 Palm Beach Locality, as the proposal does not maintain a building height which is below the prevailing tree canopy, and as such presents excessive bulk and scale.

4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B5.15 Stormwater of the Pittwater 21 Development Control Plan.

Particulars:

i. The proposal is inconsistent with the requirements of the control of Clause B5.15 Stormwater, as there is insufficient information to determine if the proposed stormwater system will comply with Council's Water Management for Development Policy.

5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C1.5 Visual Privacy of the Pittwater 21 Development Control Plan.

Particulars:

i. The proposal is inconsistent with the outcomes of the control of Clause C1.5 Visual Privacy, and it is considered that the roof terrace will result in unacceptable visual privacy impact to the adjoining site at No.24-26 Sunrise Road.

6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D12.6 Side and rear building line of the Pittwater 21 Development Control Plan.

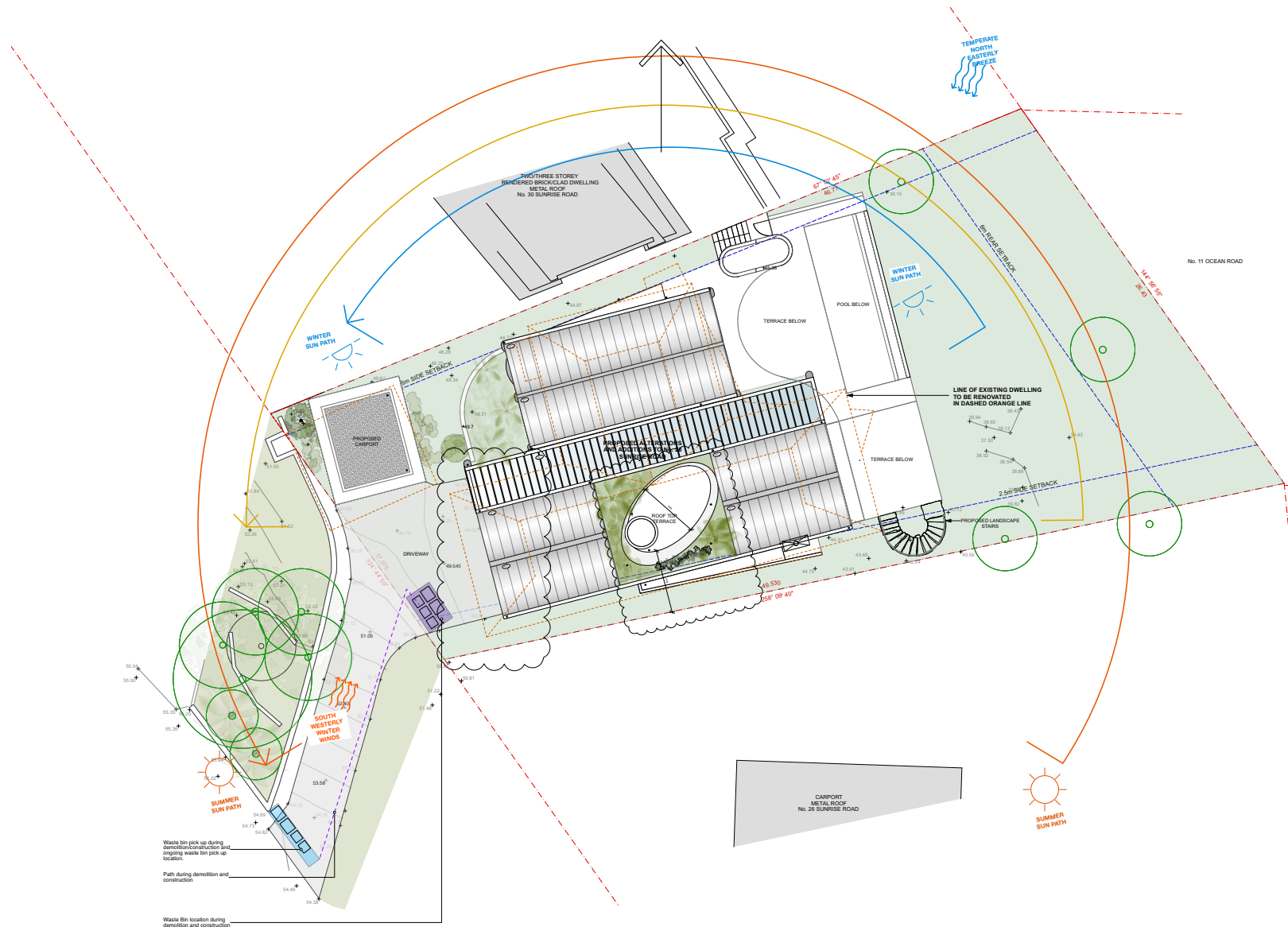
Particulars:

i. The proposal is inconsistent with the outcomes of the control of Clause D12.6 Side and rear building line as a result of the proposed roof terrace that presents a variation to the side building line, contributing to the unacceptable privacy impacts to the adjoining site at No.24-26 Sunrise Road.












7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D12.8 Building envelope of the Pittwater 21 Development Control Plan.

Particulars:

- i. The proposal is inconsistent with the outcomes of the control of Clause D12.8 Building envelope and presents an unacceptable level of bulk and scale as a result of the significant variations to the building envelope control.



DRAWING LEGEND

-  Existing Structure
-  Proposed Modified Masonry Structure
-  Proposed Modified Concrete Structure
-  Natural Ground Line
-  Proposed soil
-  Existing Tree to be Retained
-  Existing Tree to be Removed
-  Existing Tree to be Replanted
-  Tree Protection Zone
-  Tree Encroachment
-  Structure to be Demolished

DRAWING NOTES

B	Response to Council comments	23.11.2023
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AMENDMENTS



PROJECT NAME
28 Sunrise Road, Palm Beach NSW 2108

DEVELOPMENT APPLICATION

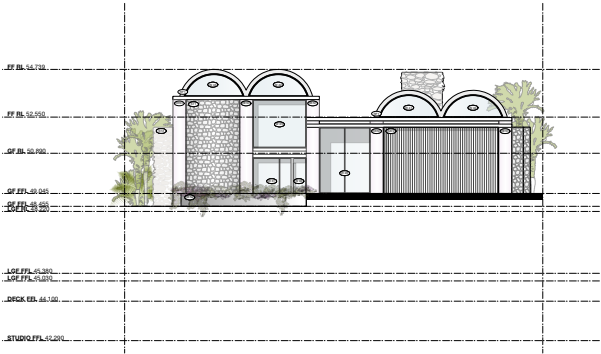
Drawing
SITE PLAN

Scale	Drawn	Date	Project No.	Drawing
1:100@A1	JÖ	23.11.2023	3526	A.00.01(B)

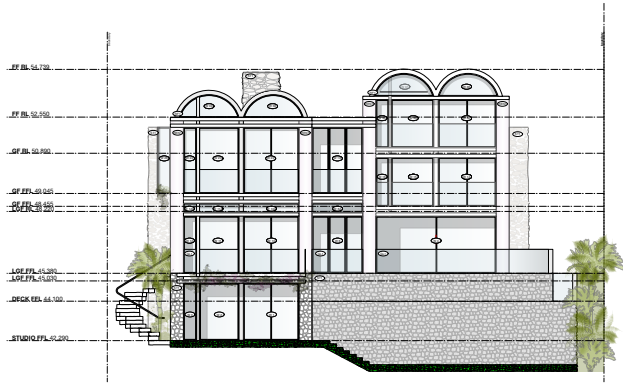
All works to be in accordance with Australian Standards, The Building Code of Australia, other relevant codes, and with Manufacturers' recommendations and instructions.
Do not scale from drawings. Verify all dimensions on site prior to construction.
This drawing is copyright and may not be used without written consent from Bailey-Katzen-Halliday P/L.

- DRAWING LEGEND**
- Existing Structure
 - Proposed Modified Masonry Structure
 - Proposed Modified Concrete Structure
 - Natural Ground Line
 - Proposed wall
 - Existing Tree to be Retained
 - Existing Tree to be Removed
 - Existing Tree to be Replanted
 - Tree Protection Zone
 - Tree Encirclement
 - Structure to be Demolished

DRAWING NOTES



1 WEST ELEVATION



2 EAST ELEVATION

8 Response to Council comments 23.11.2023

AMENDMENTS



PROJECT NAME
28 Sunrise Road, Palm Beach NSW 2108

DEVELOPMENT APPLICATION

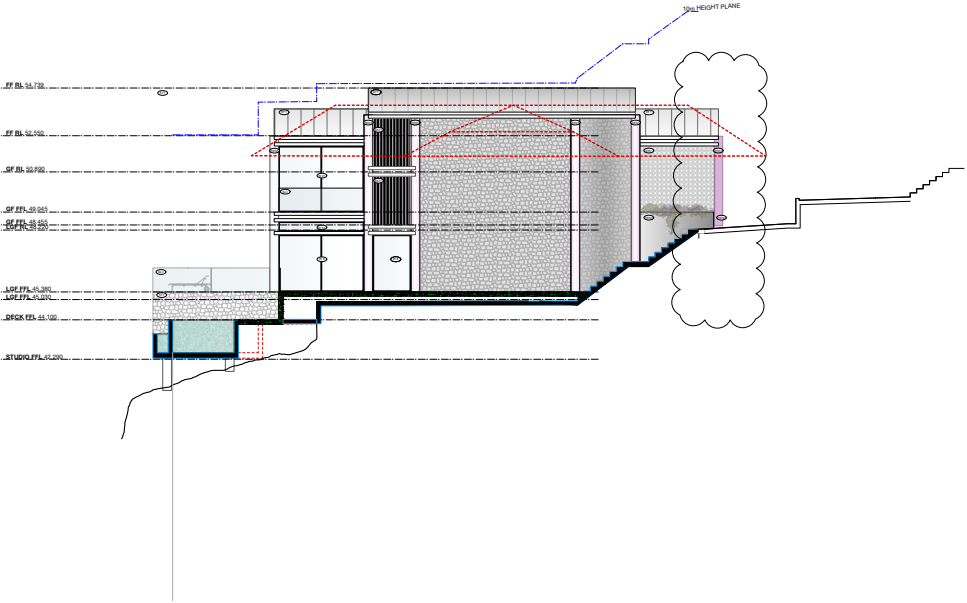
Drawings: EAST AND WEST

Drawn	Checked	Date	Project No.	Sheet
1:1008A1	JD	23.11.2023	3026	A:02.01

All works to be in accordance with Australian Standards. The Building Code of Australia, other relevant codes and all applicable laws, regulations, ordinances and standards.
We warrant that the drawings, designs and specifications are complete and correct.
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- DRAWING LEGEND
- Existing Structure
 - Proposed Modified Masonry Structure
 - Proposed Modified Concrete Structure
 - Proposed wall
 - Natural Ground Line
 - Proposed wall
 - Existing Tree to be Retained
 - Existing Tree to be Removed
 - Existing Tree to be Replanted
 - Tree Protection Zone
 - Tree Encroachment
 - Structure to be Demolished

DRAWING NOTES



8 Response to Council comments 23.11.2023

AMENDMENTS

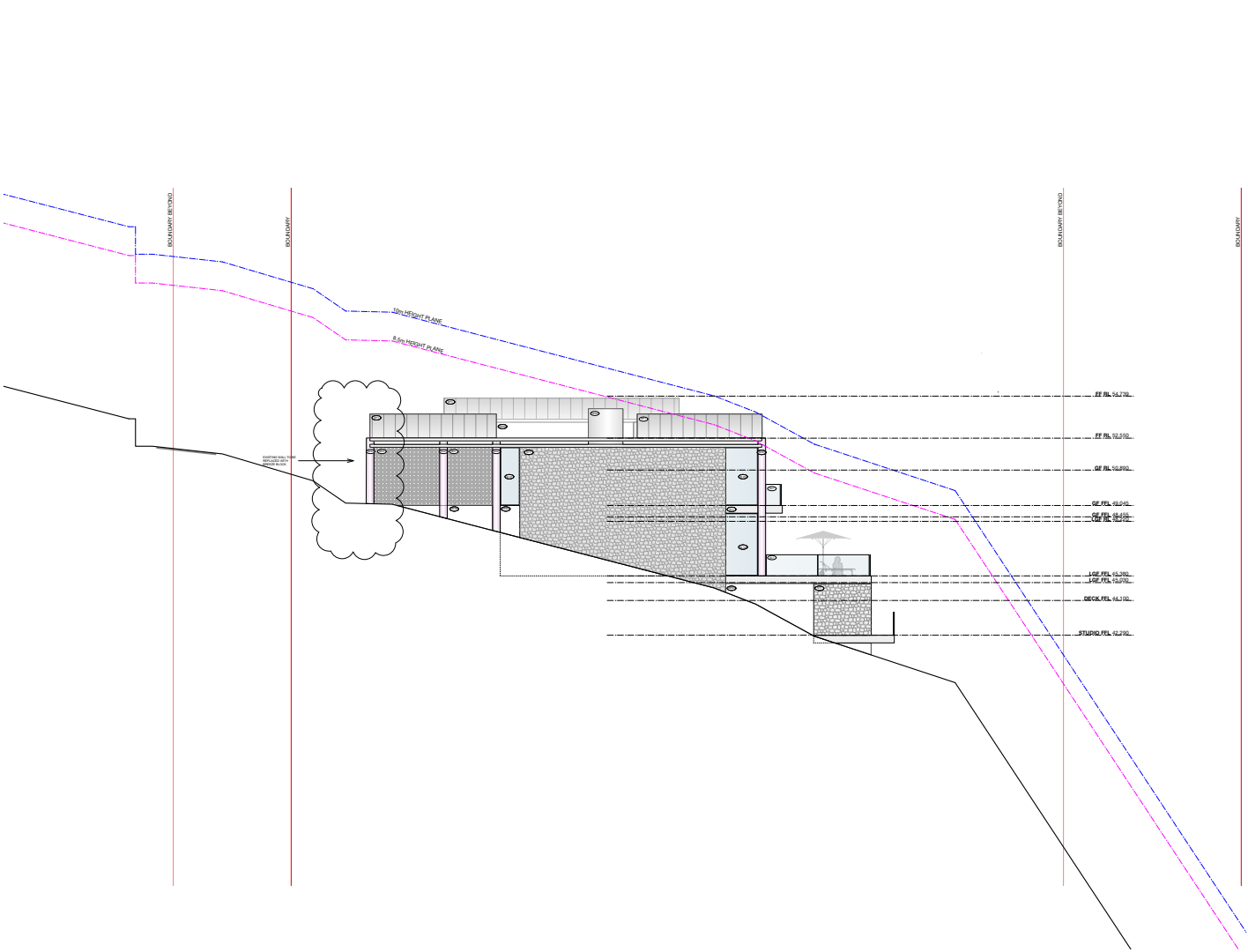


PROJECT NAME
28 Sunrise Road, Palm Beach NSW 2108

DEVELOPMENT APPLICATION
Drawing
ELEVATION - SOUTH

Issue	Revised	Date	Project No	Revised
1.100BA1	JO	23.11.2023	3026	A.02.02

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DRAWING NOTES

8 Response to Council comments 23.11.2023

AMENDMENTS

bkh

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Fax: +1 212 693 6000
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PROJECT NAME
28 Sunrise Road, Palm Beach NSW 2108

DEVELOPMENT APPLICATION
Drawing
ELEVATION - NORTH

Issue	Revised	Date	Project No	Revised
1:1008A1	JO	23.11.2023	3026	A:02.03

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ITEM 3.5	DA2023/1685 - 27 RAYNER ROAD WHALE BEACH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
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PURPOSE

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

RECOMMENDATION

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of PLEP 2014 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2023/1685 for Alterations and additions to a dwelling house on land at Lot 22 DP 1280187, 27 Rayner Road WHALE BEACH, subject to the conditions set out in the Assessment Report.

REPORTING MANAGER	Adam Richardson
TRIM FILE REF	2024/080598
ATTACHMENTS	1 ↓Assessment Report 2 ↓Site Plan and Elevations 3 ↓Clause 4.6

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/1685
----------------------------	-------------

Responsible Officer:	Megan Surtees
Land to be developed (Address):	Lot 22 DP 1280187, 27 Rayner Road WHALE BEACH NSW 2107
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Sayde Sara
Applicant:	Peter Downes

Application Lodged:	21/11/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	27/11/2023 to 11/12/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 11%
Recommendation:	Approval

Estimated Cost of Works:	\$ 25,000.00
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EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a dwelling house. Specifically, the application proposes a roof over an existing ground floor balcony.

The application is referred to the Development Determination Panel (DDP) as the proposal seeks to vary Clause 4.3 Height of buildings by more than 10%.

No objections have been received.

Critical assessment issues included zone C4 Environmental Living, Clause 4.6 Exceptions to development standards, Clause 7.6 Biodiversity protection, Clause 7.7 Geotechnical hazards of the

PLEP 2014 and D12.5 Front building line, D12.8 Building envelope and D12.10 Landscaped area - environmentally sensitive land of the P21DCP.

The written Clause 4.6 variation request for the non-compliance with height standard arises from the construction of a lightweight roof to the existing ground floor balcony, which results in a 11% variation to the building height standard. The ground floor balcony is currently accessed from the internal ground floor open plan kitchen, dining and living areas. The proposed roof is sited below the upper ridge of the existing dwelling. The ground floor balcony will remain open on all external sides, allowing for penetration of natural light to the subject site and adjoining properties. Further, as the balcony is existing, there are no changes to the existing privacy between properties. In this instance, and notwithstanding the extent of non-compliance, the proposed development does not cause any unreasonable amenity impacts upon adjoining properties.

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

PROPOSED DEVELOPMENT IN DETAIL

This development application seeks consent for the construction of a roof form over an existing balcony on the ground floor.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living
 Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
 Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
 Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
 Pittwater 21 Development Control Plan - D12.5 Front building line
 Pittwater 21 Development Control Plan - D12.8 Building envelope

Pittwater 21 Development Control Plan - D12.10 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 22 DP 1280187 , 27 Rayner Road WHALE BEACH NSW 2107
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southern side of Rayner Road.</p> <p>The site is irregular in shape with a frontage of 20.695m to the southern boundary where the front of the dwelling is sited, and a secondary frontage of 6.03 metres to Rayner Road. The site has a total depth of 49.67m. The site has a surveyed area of 804.1m².</p> <p>The site is located within the C4 Environmental Living zone within the <i>Pittwater Local Environmental Plan 2014</i> (PLEP 2014) and accommodates two (2) and three (3) storey residential dwelling with swimming pool.</p> <p>The site has a northerly orientation toward Rayner Road, and is located on a slope of approximately 15.54 metres (or 31.08%), falling from the south-eastern corner toward the norther boundary.</p> <p>The site is not known to have any threatened species.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by residential developments of similar bulk and scale.</p>

Map:



SITE HISTORY

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

- **N0135/08.** This development application sought consent for the construction of a new dwelling house with garage and swimming pool. This application was approved, subject to conditions, on 10 December 2008.
- **N0135/08/S96/1.** This modification application sought consent to modify N0135/08. This application was approved, subject to conditions, on 26 May 2010.
- **BC0053/17.** This Building Information Certificate was lodged with Council for a *sandstone block planter box walls located to the southern side of the premises clear of the right of carriageway plus sandstone stairs to the west side of the garage*. A Building Information Certificate was issued on 19 October 2017.
- **N0502/17.** This development application sought consent for alterations and additions to a residential dwelling. This development application was approved, subject to conditions, on 10 January 2018. **Mod2018/0423** was submitted to Council, which sought to modify N0502/17. The modification application was approved, subject to conditions, on 26 September 2018.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
environmental planning instrument	
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p>Part 4, Division 2 of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p>

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the application that included a certificate (prepared by Sydney Bushfire Consultants, dated 25 October 2023) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent. The proposed development is considered to satisfy the requirements of Section 4.14 of the Act.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 27/11/2023 to 11/12/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	<p>This application has been referred as it is in the vicinity of 2 local heritage items, being:</p> <p>Item 2270160 - "Careel House" 105A Whale Beach Road,</p>

Internal Referral Body	Comments		
	Avalon Beach Item 2270161 - "Loggan Rock" (house) 111 Whale Beach Road, Avalon Beach		
	Details of heritage items affected		
	Details of these heritage items in the vicinity (extracts), as contained within the heritage inventory, are: Item 2270160 - "Careel House" 105A Whale Beach Road, Avalon Beach <u>Statement of Significance</u> Careel House at 105a Whale Beach Rd, Avalon Beach, was built in 1931 to a design by the Australian well-known architect Alexander Stewart Jolly, has historic and aesthetic significance as a vernacular weekender for Major & Mrs C. R. Grieve O.B.E. The architectural heritage of the area is characterised by this house form which, in Pittwater, evolved as a structure subordinate to the landscape. Careel House, with its use of rough faced sandstone and simple detailing, is designed to harmonise with the surroundings and less visual impact. It is representative of A.S. Jolly's work of this type in the area and is an increasingly rare, intact example of its type.		
	Item 2270161 - "Loggan Rock" (house) 111 Whale Beach Road, Avalon Beach <u>Statement of Significance</u> 'Loggan Rock', completed in 1931, is significant as a representative example of the architectural works and philosophy of Alexander Stewart Jolly in the 1930s. It exhibits a rare aesthetic value in its form, morphology, period of construction, use of materials and sensitive relationship to the landscape in the Palm Beach area. The residence exhibits Baroque rustication using colours, textures and materials from the site and the surrounding bushland. The main feature of the cabin is the dominant fireplace and chimney stack. The building is of an organic form using tree trunks for support, shingles for the roof and branches as window mullions.		
	Other relevant heritage listings		
	SEPP (Biodiversity and Conservation) 2021	No	Comment if applicable
	Australian Heritage Register	No	
	NSW State Heritage Register	Yes	"Loggan Rock" is a State heritage item
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	

Internal Referral Body	Comments		
	Other	No	
	Consideration of Application		
	This application is for alterations and additions to an existing dwelling house, comprising the addition of a roof over an existing balcony area on the northern side of the existing house.		
	The heritage items are located to the south and south-east of the subject site. "Loggan Rock" adjoins the southern boundary of the subject site, separated by an shared access driveway. The proposed works are minor and located on the northern side of the house facing Rayner Road, and given the slope of the site from south to north, the proposed works will not be visible from either heritage items. Due to the physical and visual separation of these works from the heritage items in the vicinity, it is considered there will be no impact upon the heritage significance of these heritage items.		
	Therefore, no objections are raised on heritage grounds and no conditions required.		
	<u>Consider against the provisions of CL5.10 of PLEP 2014:</u>		
	Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? N/A		
	Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? N/A		

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

No changes are proposed to the window schedule, therefore the proposal does not trigger the need for a BASIX Certificate.

As such, a BASIX Certificate is not required to be submitted with this development application.

SEPP (Transport and Infrastructure) 2021Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021**Chapter 2 – Coastal Management**

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

Division 4 Coastal use area**2.11 Development on land within the coastal use area**

- 1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
 - a) has considered whether the proposed development is likely to cause an adverse impact on the following:

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

Comment:

This Clause applies to the subject site. The proposed development is sited entirely over the existing building footprint. Therefore, there are no impacts upon the matters prescribed within the above sub-clause.

Division 5 General

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

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

Comment:

The proposed development will not increase the risk of coastal hazards.

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

Chapter 4 – Remediation of Land

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

Pittwater Local Environmental Plan 2014

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

aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	10.0m*	11.1m	11%	No

* Clause 4.3 Height of buildings of the Pittwater Local Environmental Plan 2014 (PLEP 2014) subclause 2D stipulates the following:

(2D) Despite subclause (2), development on land that has a maximum building height of 8.5 metres shown for that land on the [Height of Buildings Map](#) may exceed a height of 8.5 metres, but not be more than 10.0 metres if—

- (a) the consent authority is satisfied that the portion of the building above the maximum height shown for that land on the [Height of Buildings Map](#) is minor, and*
- (b) the objectives of this clause are achieved, and*
- (c) the building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%), and*
- (d) the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.*

Comment:

The portion of the built form that extends beyond the prescribed maximum building height is sited only to the roof form, which is minor. As will be detailed within Clause 4.6 of this report, the proposed development can achieve the objectives of this Clause. The slope directly beneath the building footprint is 77%, which far exceeds 30%. The proposed roof has been sited and designed appropriately with consideration of the slope, with no need for cut and fill to the existing landform.

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone C4 Environmental Living

Zone objectives

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*

Comment:

The proposed development includes a roof form over the existing ground floor balcony, which is considered to be low-impact development ancillary to an existing dwelling house. In this instance, the proposal does not adversely or unreasonably impact upon any special ecological, scientific, or aesthetic values that may be applicable to the subject site.

- *To ensure that residential development does not have an adverse effect on those values.*

Comment:

As detailed above, the proposed development will not have an adverse effect on those values.

- *To provide for residential development of a low density and scale integrated with the landform and landscape.*

Comment:

The proposed roof form is sited over the existing building footprint and, therefore, does not require any works to the existing landform and landscape. In this instance, the proposal is considered to be of a low-density and scale that is appropriately integrated into the existing landform.

- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

Comment:

The proposed development does not impact upon existing riparian or foreshore vegetation, nor will it impact upon existing wildlife corridors as the works do not require the removal of any existing vegetation.

4.6 Exceptions to development standards

The application seeks consent to vary a development standard as follows:

Development standard: Clause 4.3 Height of buildings

Requirement: 10.0 metres

Proposed: 11.1 metres

Percentage of variation: 11%

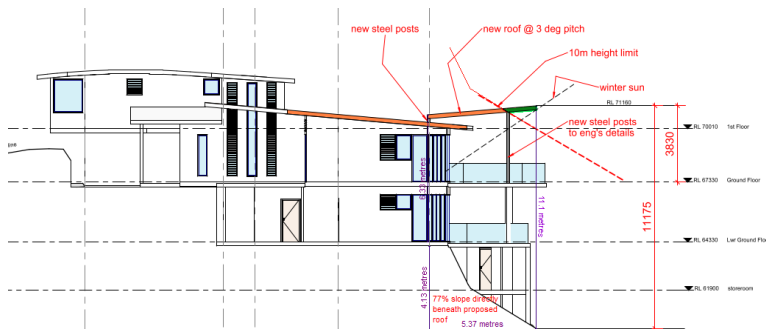


Figure 1. Proposed maximum building height (breach indicated in green shading).

With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is/is not accompanied by a document that sets out the grounds on which the Applicant seeks to demonstrate the matters set out in Clause 4.6(3)(a) and (b) of the PLEP 2014 (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

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

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

Comment:

The objectives of this clause have been considered pursuant to Section 4.15(a)(i) of the *Environmental Planning and Assessment Act 1979*.

Subclause (2) of this clause provides that:

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

Comment:

Clause 4.3 Height of buildings is not expressly excluded from the operation of this clause.

Subclause (3) of this clause provides that:

(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

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

Comment:

Council is satisfied that the Applicant has demonstrated that compliance with Clause 4.3 Height of buildings is unreasonable or unnecessary in the circumstances of this application for the following reasons:

- That compliance with the maximum building height requirement is unreasonable and unnecessary in the circumstances of the case given that the objectives of Clause 4.3 of PLEP 2014 have been met and that sufficient environmental planning grounds have been demonstrated to justify contravention of the building height development standard.
- The proposal is considered to be within the public interest given its consistency with the objectives of the height of buildings development standard and the objectives of C4 Environmental Living zone prescribed within the PLEP 2014.

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

Comment:

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

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

The Clause 4.6 Request argues, in part:

- *'The proposed new roof has been designed to minimise bulk and scale through its low profile form, and relying on steel posts of minimal dimension. The space above the balcony will remain open and unenclosed on all sides. Because of the location of the roof, above a portion of very steep terrain, but below the remaining levels of the dwelling, the new roof will not interrupt the visual catchment, and will remain below the canopy of trees in the vicinity of the site.*
- *The new roof over the balcony provides a shade element that is not only critical for thermal efficiency and amenity in an exposed location, but also provides additional modulation as anticipated [sic] by the locality statement.*
- *The new roof remains substantially below the highest points of the existing roof at ground floor and first floor levels. Dwellings immediately to the east of the site are on more elevated land and higher RL's, and the dwelling immediately to the west has a ridgeline with similar RL's to the proposed new roof. The new roof is consistent with development generally in Whale Beach, which is often on steeply sloping land.*
- *Shading of neighbours is minimal because of the optimal orientation of the dwelling. The low profile structure will cast minimal shadow upon neighbouring dwellings, which will both maintain compliant existing sunlight levels to living areas and private open space.*
- *The fall of the land, relative levels of neighbouring dwellings, and low profile design of the new roof ensures that view lines to the east and west remain optimised for neighbours. The primary views of dwellings in the vicinity are to the north, north-east, and north-west, and these views will remain uninterrupted.*
- *The dwelling retains stepped floor plates and the use of low profile structural elements ensures that overall the dwelling design is responsive to the steep terrain.*
- *By not exceeding the height of the existing dwelling, the proposed design maintains the complimentary visual contribution of the dwelling in the highly scenic context. A strong landscape presence on the site is maintained and enhanced and ensures the dwelling sits unobtrusively in the highly vegetated context. No heritage conservation areas or items will be affected.*
- *The majority of the non-compliance arises from the significant fall of the land directly under the new roof location. The pre and post development ground levels at this point are very steep and the additional height beyond the 8.5m limit reflects the required height needed to achieve levels for building on the steeply sloping land.*

- *The sloping land within this coastal location results in the ground floor balcony being highly exposed to the elements and the new roof provides much needed relief from sun and heat, and improved thermal efficiency for the dwelling as a whole.*
- *Alternative designs that may reduce the variation have been explored. Pitching the new roof to fall to the north would still require a variation to the height limit, albeit by a lesser amount, however this design cannot efficiently dispose of stormwater. The proposed roof which falls minimally from north to south allows the dwelling to utilise its existing stormwater system and avoid additional drainage infrastructure.*
- *Despite the variation proposed, the context of the new roof is that it has minimal presence in the visual catchment. As ground levels below the new roof are generally obscured from view in the immediate vicinity of Rayner Road, the height variation is unlikely to be perceived by nearby dwellings or from the public place. The new roof will be viewed in the context of the higher the existing roofline, and therefore will not be jarring or obtrusive in the landscape. This is enhanced by the minimal bulk and scale contributed by the low profile structural elements to be used.*
- *Steep topography is a characteristic of Whale Beach that results in dwellings which to a minor extent breach the 8.5m height limit and the 10m exceptions clause. Whilst the proposed new roof extends beyond the 10m by a small amount, its context is consistent with development in the vicinity which also benefit from these clauses and the resulting structure will therefore not be inconsistent with the character of the locality.*
- *The site has significant aesthetic value in the visual catchment of Whale Beach. The development maintains the existing height of building, whilst ensuring that the new roof form remains low impact, secondary to its landscape setting, and considerate of views and overshadowing.*
- *The proposed development remains below the existing RL of the building and respects the existing levels on the site. There is no site disturbance required and the dwelling will maintain its landscaped setting and good relationship with neighbouring dwellings and the public domain.*
- *The proposed development maintains existing landscaped areas and will continue to enhance the ecological values on the site through additional native planting.'*

It is considered the Applicant's written request to vary development standard Clause 4.3 Height of buildings of the *Pittwater Local Environmental Plan 2014* (PLEP 2014) is acceptable given the proposal seeks only to install a lightweight roof form over the existing balcony sited on the ground floor level of the existing dwelling house. The assessment concurs with the Applicant's written request in that the proposed roof maintains existing amenity enjoyed by the occupants of the adjoining properties, noting that the orientation of the dwelling and adjoining properties allows for reasonable solar access that achieves compliance with the requirements stipulated within control C1.4 Solar Access of the P21DCP. As the balcony is existing, there are no additional privacy impacts arising upon adjoining properties. Furthermore, the proposed roof form is sited below the highest point of the existing dwelling, which provides a complementary structure to the existing built form that does not detract from the scenic quality of Whale Beach.

Council is satisfied that the Applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of Clause 4.3 for the following reasons:

The proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, thereby satisfying objects 1.3(c) and (g) of the EPA Act.

Public Interest:

Matters relevant to public interest in respect of the development are considered in the relevant sections of this report as per Section 4.15(1)(e) of the EPA Act.

Conclusion:

Council is satisfied as to the matters set out in Clause 4.6 of the PLEP 2014.

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

7.6 Biodiversity protection

Before determining a development application for development on land to which this clause applies, this clause requires the consent authority to consider:

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

Comment:

While the subject site is located within the Pittwater Biodiversity mapped area, referral to Council's Bushland and Biodiversity team is not required as the proposed roof is sited over the existing building footprint. Therefore, Council can be satisfied that the development will not have any adverse impact on the condition, ecological value and significance of the fauna and flora on the land; the importance of the vegetation on the land to the habitat and survival of native fauna; or the habitat elements providing connectivity on the land. Council is also satisfied that the development will not unreasonably fragment, disturb, or diminish the biodiversity structure, function, or composition of the land.

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

Comment:

While the subject site is located within the Pittwater Biodiversity mapped area, referral to Council's Bushland and Biodiversity team is not required as the proposed roof is sited over the existing building footprint. Therefore, Council can be satisfied that the proposal includes appropriate measures to avoid, minimise, or mitigate the impacts of the development.

Before granting development consent, this clause also requires the consent authority to be satisfied that:

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

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

Comment:

While the subject site is located within the Pittwater Biodiversity mapped area, referral to Council's Bushland and Biodiversity team is not required as the proposed roof is sited over the existing building footprint. Therefore, Council can be satisfied that the development is designed, sited and will be managed to any significant adverse environmental impact.

7.7 Geotechnical hazards

Under Clause 7.7 Geotechnical Hazards, before determining a development application for development on land to which this clause applies, the consent authority must consider the following matters to decide whether or not the development takes into account all geotechnical risks:

- (a) site layout, including access,*
- (b) the development's design and construction methods,*
- (c) the amount of cut and fill that will be required for the development,*
- (d) waste water management, stormwater and drainage across the land,*
- (e) the geotechnical constraints of the site,*
- (f) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment:

The proposed development is supported by a geotechnical risk assessment and architectural plans that demonstrate all geotechnical risks have been taken into account. Subject to recommended conditions, the proposal can achieve appropriate geotechnical risk.

Development consent must not be granted to development on land to which this clause applies unless:

- (a) the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and*

Comment:

The proposed development is supported by a geotechnical risk assessment and, subject to recommended conditions, can achieve appropriate stormwater management so as not to adversely impact water leaving the land.

- (b) the consent authority is satisfied that:*

- (i) the development is designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development, or*
- (ii) if that risk or impact cannot be reasonably avoided - the development is designed, sited and will be managed to minimise that risk or impact, or*
- (iii) if that risk or impact cannot be minimised - the development will be managed to mitigate that risk or impact.*

Comment:

A geotechnical risk assessment accompanies the proposed development. Further, the proposed works are sited entirely over the existing building footprint and does not require excavation or fill to the existing ground. In this instance, the proposal has been designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development.

Pittwater 21 Development Control PlanBuilt Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	Primary Frontage Southern Boundary 6.5m	N/A	N/A	N/A
	Secondary Frontage Northern Boundary 3.25m	2.65m - 12.2m	18.45%	No & Yes
Side building line	Eastern Boundary 2.5m	6.3m	N/A	Yes
	Western Boundary 1m	8.65m - 10.2m	N/A	Yes
Building envelope	Eastern Elevation 3.5m	Outside envelope (for a length of 2.5m, with a max. height of 1.5m)	N/A	No
	Western Elevation 3.5m	Within envelope	N/A	Yes
Landscaped area	60% (482.46m ²)	17.64% (141.9m ²)	70.5%	No, existing & unchanged

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes
B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor	Yes	Yes
B5.15 Stormwater	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.23 Eaves	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	Yes	Yes
D12.6 Side and rear building line	Yes	Yes
D12.8 Building envelope	No	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	No	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

D12.5 Front building line

Detailed description of non-compliance

This control requires development to be setback 6.5 metres from the front boundary line. This control also permits a variation where a site may experience dual frontages to allow for a secondary front setback distance of half the primary setback distance (being 3.25 metres).

The subject site is located at the end of the cul-de-sac of Rayner Road, utilising a shared driveway with 25, 29 and 31 Rayner Road. The dwelling house is accessed by vehicle and primary pedestrian access via the shared carriageway in the southern portion of the subject site. Secondary pedestrian access can be obtained from the shared carriageway in the northern portion of the site. Based on this, the southern boundary is considered to be the primary frontage, and the northern boundary is the secondary frontage.

The proposed works are sited along the northern elevation of the existing dwelling. In this instance, the primary front setback of 6.5 metres is not applicable for the proposed development. The proposed development, therefore, is bound by a secondary front setback distance of 3.25 metres. The proposal results in a secondary front setback distance ranging between 2.65 metres and 12.2 metres (with the maximum variation being 24.3%). In this instance, a merit consideration of the non-compliance is undertaken below.

Merit consideration

- *Achieve the desired future character of the Locality.*

Comment:

The proposed roof form, while technically numerically compliant, can achieve the desired future character of the Whale Beach locality in that it does not cause any unreasonable amenity

impact upon adjoining properties, nor does it impact upon the foreshore area or nearby public places.

- *Equitable preservation of views and vistas to and/or from public/private places. (S)*

Comment:

Due to the siting of the existing dwelling, which is higher than the adjoining properties, means the proposed roof form does not cause unreasonable view loss from adjoining properties to public/private places.

- *The amenity of residential development adjoining a main road is maintained. (S)*

Comment:

Rayner Road is not a main road. Notwithstanding, the proposed roof form will be commensurate with the existing built form and will not detract from the existing amenity of Rayner Road.

- *Vegetation is retained and enhanced to visually reduce the built form. (En)*

Comment:

The proposed roof form is sited over the existing building footprint and does not require the removal of any vegetation.

- *Vehicle manoeuvring in a forward direction is facilitated. (S)*

Comment:

The proposed development does not alter the existing vehicle manoeuvring ingress and egress to the site.

- *To preserve and enhance the rural and bushland character of the locality. (En, S)*

Comment:

The Whale Beach locality is not considered to be rural. As detailed above, the proposal is sited over the existing building footprint and does not require the removal of any existing vegetation.

- *To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.*

Comment:

The proposed non-compliance will not be easily discernible from the street frontage of Rayner Road as the proposal is sited approximately 14.3 metres from Rayner Road. The proposed roof form will also be visually obscured by the steep topography and existing vegetation. In this instance, the existing streetscape will not be adversely or unreasonably impacted by the proposed non-compliance.

- *To encourage attractive street frontages and improve pedestrian amenity.*

Comment:

As detailed above, the existing street frontage will not be adversely impacted by the proposed non-compliance. The existing pedestrian amenity traversing Rayner Road will not be impacted by the proposed development.

- *To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment.*

Comment:

Notwithstanding the minor non-compliance as detailed above, the proposed roof form is minor and does not require excavation or fill that would alter the existing landform, nor does it create unreasonable amenity impacts upon adjoining/nearby properties.

D12.8 Building envelope

Detailed description of non-compliance

This control requires development to be sited within a building envelope, which is measured at a height of 3.5 metres from the side boundary and then projecting plans angled inward at 45 degrees. Notwithstanding the significant eastern side boundary setback distance, the proposal extends beyond the prescribed side boundary envelope to the eastern elevation, as indicated in the figure below. However, this control permits a variation to exceed the side boundary envelope where the building footprint is located on a slope of 16.7 degrees (that is, 30%). The roof form is sited over the existing building footprint that is located on a slope of 77%. Therefore, the variation can be applied, in this instance.

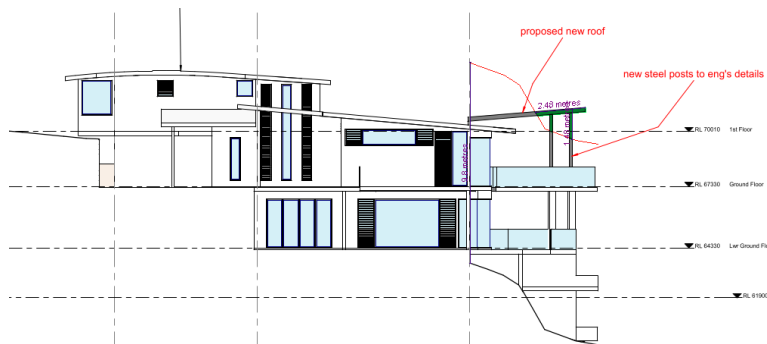


Figure 2. Eastern elevation side boundary envelope, breach indicated by green shading.

Merit consideration

- *To achieve the desired future character of the Locality. (S)*

Comment:

The proposed roof form, while technically numerically compliant, can achieve the desired future character of the Whale Beach locality in that it does not cause any unreasonable amenity impact upon adjoining properties, nor does it impact upon the foreshore area or nearby public places.

- *To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.*

Comment:

The proposed non-compliance will not be easily discernible from the street frontage of Rayner Road as the proposal is sited approximately 14.3 metres from Rayner Road. The proposed roof

form will also be visually obscured by the steep topography and existing vegetation. In this instance, the existing streetscape will not be adversely or unreasonably impacted by the proposed non-compliance.

- *To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.*

Comment:

Notwithstanding the minor non-compliance as detailed in the above figure, the proposed roof form is minor and does not require excavation or fill that would alter the existing landform, nor does it create unreasonable amenity impacts upon adjoining/nearby properties.

- *The bulk and scale of the built form is minimised. (En, S)*

Comment:

Notwithstanding the numeric non-compliance to this control, the proposed roof form is minor and does not create an unreasonable bulk and scale to the existing built form.

- *Equitable preservation of views and vistas to and/or from public/private places. (S)*

Comment:

The proposed roof is a minor addition to the existing dwelling. Due to the siting of the existing dwelling, which is higher than the adjoining properties, means the proposed roof form does not cause unreasonable view loss from adjoining properties to public/private places.

- *To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to neighbouring properties. (En, S)*

Comment:

The proposed roof form does not create any unreasonable amenity impacts upon adjoining properties. The existing amenity enjoyed by occupants of adjoining properties is maintained, notwithstanding the numeric non-compliance.

- *Vegetation is retained and enhanced to visually reduce the built form. (En)*

Comment:

The proposed roof form is sited over the existing building footprint and, therefore, does not require the removal of any existing vegetation on site.

D12.10 Landscaped Area - Environmentally Sensitive Land

The subject site is located on Area 1 of the Landscaped Area map of the Pittwater 21 Development Control Plan (P21DCP). In this instance, the site is required to have a minimum of 60% landscaping. The site, as existing, has a landscaped area of 17.64%, which presents a variation of 70.5%. The proposed development is sited entirely over the existing building footprint and does not further reduce the existing non-compliant landscaped area. In this circumstance, a detailed merit consideration is not required.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this application.

CONCLUSION

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

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

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

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

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

Council is satisfied that the Applicant's written request under Clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify variation of the development standard contained within Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

PLANNING CONCLUSION

This proposal, for alterations and additions to a dwelling house has been referred to the Development Determination Panel (DDP) as the proposal seeks to vary Clause 4.3 Height of buildings by more than 10%.

No objections were received.

The critical assessment issues include zone C4 Environmental Living, Clause 4.6, Clause 7.6 Biodiversity protection, Clause 7.7 Geotechnical hazards of the PLEP 2014 and D12.5 Front building line, D12.8 Building envelope and D12.10 Landscaped area - environmentally sensitive land of the P21DCP.

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

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

RECOMMENDATION

That Northern Beaches Council, as the consent authority, vary the development standard contained within Clause 4.3 Height of Buildings, pursuant to Clause 4.6 of the Pittwater Local Environmental Plan 2014 because the Applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) of Clause 4.6.

Accordingly Council as the consent authority grant Development Consent to DA2023/1685 for Alterations and additions to a dwelling house on land at Lot 22 DP 1280187, 27 Rayner Road, WHALE BEACH, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
2312-01		Site Plan	Peter Downes Designs	20 September 2023

2312-02		Ground Floor	Peter Downes Designs	20 September 2023
2312-06		West Elevation	Peter Downes Designs	20 September 2023
2312-07		East Elevation	Peter Downes Designs	20 September 2023
2312-08		Section 1	Peter Downes Designs	20 September 2023
2312-09		Roof	Peter Downes Designs	20 September 2023
N/A		External finishes schedule	Not listed	Not dated

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Geotechnical Review	E26190.G19	EI Australia	14 November 2023
Bushfire Assessment Report		Sydney Bushfire Consultants	25 October 2023
Waste Management Plan		Peter Downes	17 November 2023

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

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

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

2. **Compliance with Other Department, Authority or Service Requirements**

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	Not dated

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

Reason: To ensure the work is carried out in accordance with the determination and the

statutory requirements of other departments, authorities or bodies.

3. Prescribed Conditions

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

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

4. General Requirements

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

Demolition and excavation works are restricted to:

 - 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).
- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the following is required:
 - i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
 - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that

applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.

- iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

5. Stormwater Drainage Disposal

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

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

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

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

Reason: To ensure satisfactory management of stormwater.

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Certifier.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

7. Compliance with Standards

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

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

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

8. External Finishes to Roof

The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

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

9. Sydney Water "Tap In"

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

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

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

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

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

DURING BUILDING WORK

10. Geotechnical Requirements

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

Reason: To ensure geotechnical risk is mitigated appropriately.

11. Survey Certificate

A survey certificate prepared by a Registered Surveyor is to be provided demonstrating the finished roof/ridge height are in accordance with the approved plans.

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

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

12. Waste Management During Development

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

13. Stormwater Drainage Disposal Certification

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

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

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

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

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

Reason: To ensure satisfactory management of stormwater.

14. Geotechnical Certification Prior to Occupation Certificate

The Applicant is to submit the completed Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) to the Principal Certifier prior to issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

15. Waste Management Confirmation

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

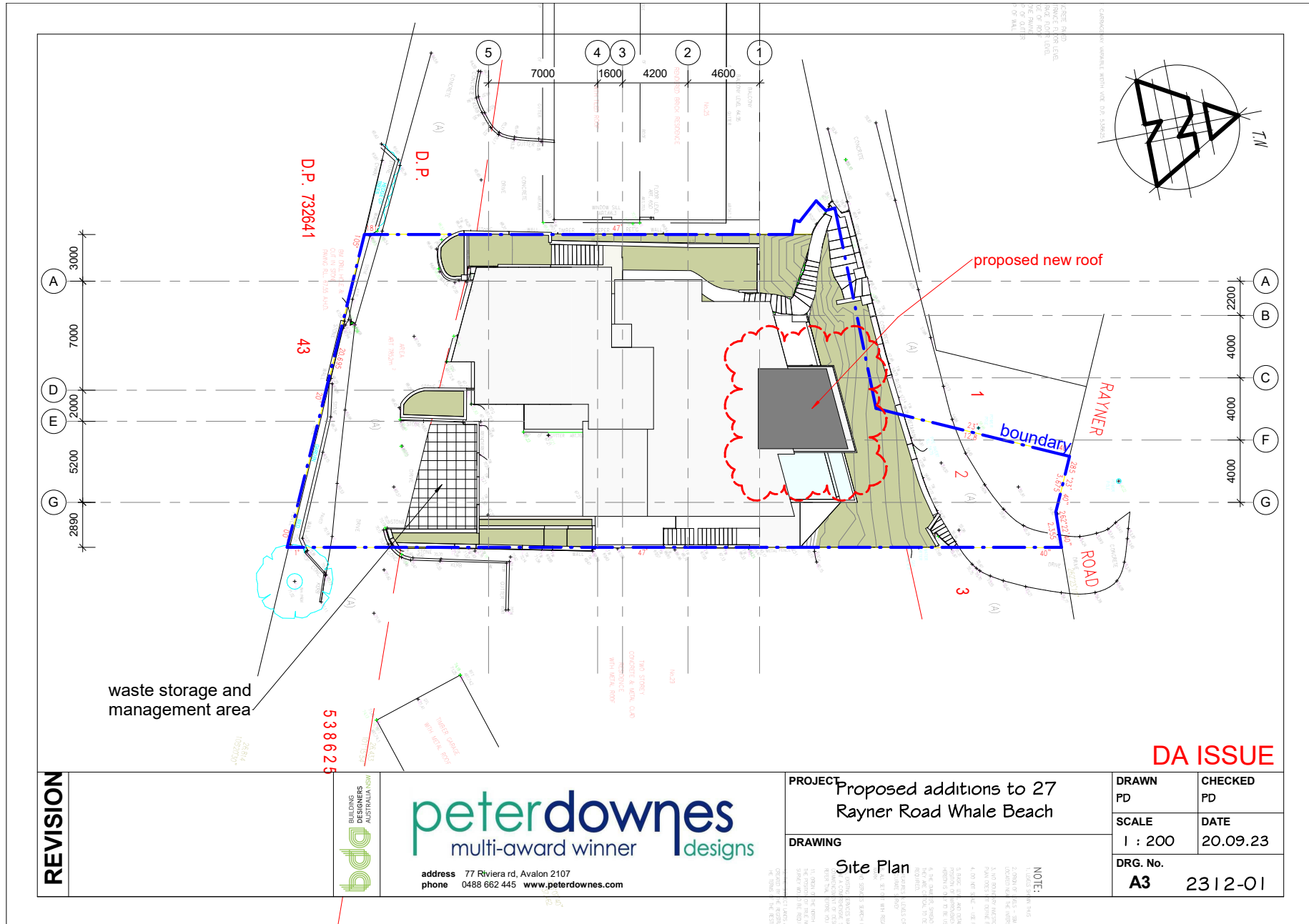
Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

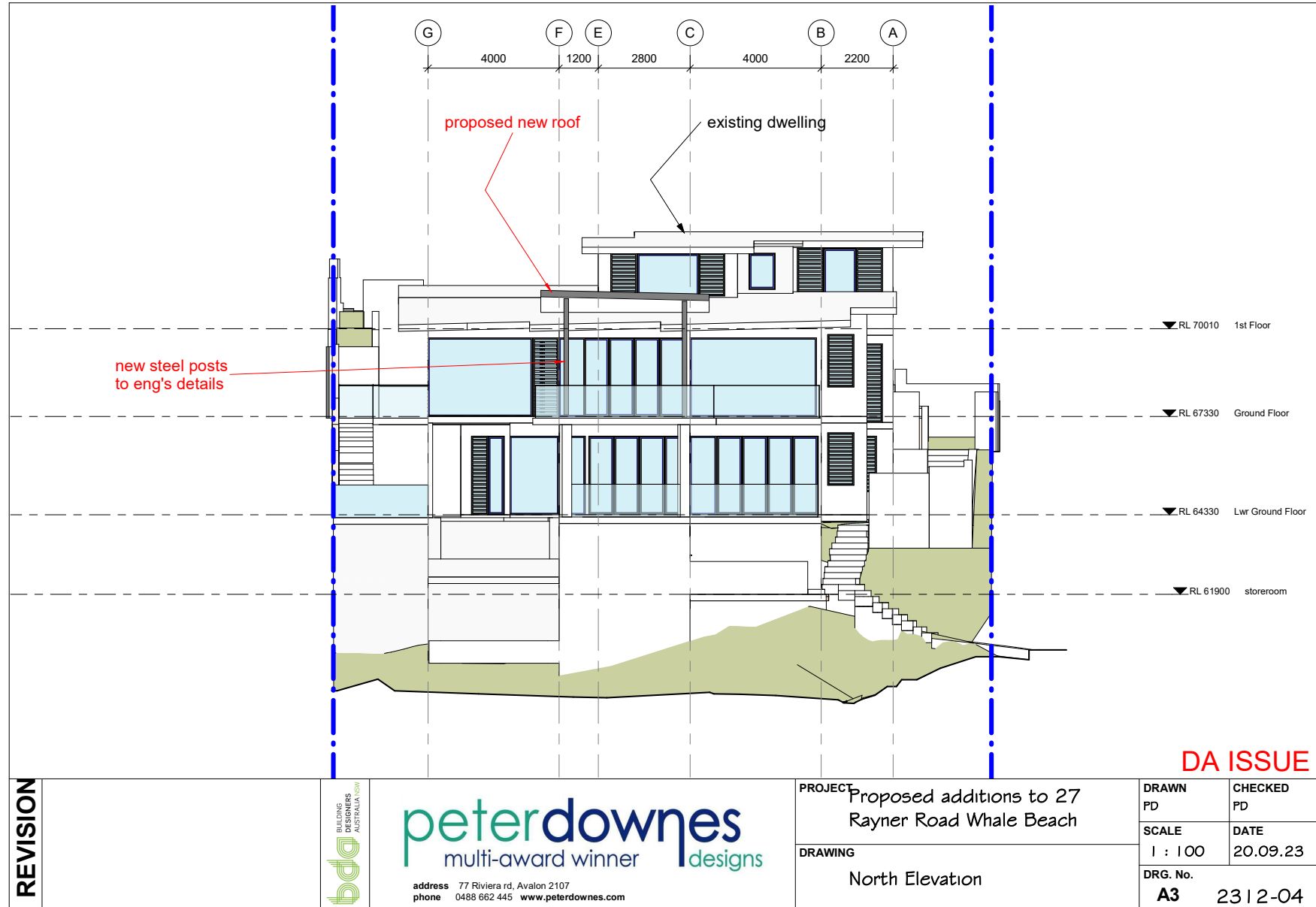
ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

16. **Geotechnical Recommendations**

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

Reason: To ensure geotechnical risk is mitigated appropriately.





BUILDING NOTES

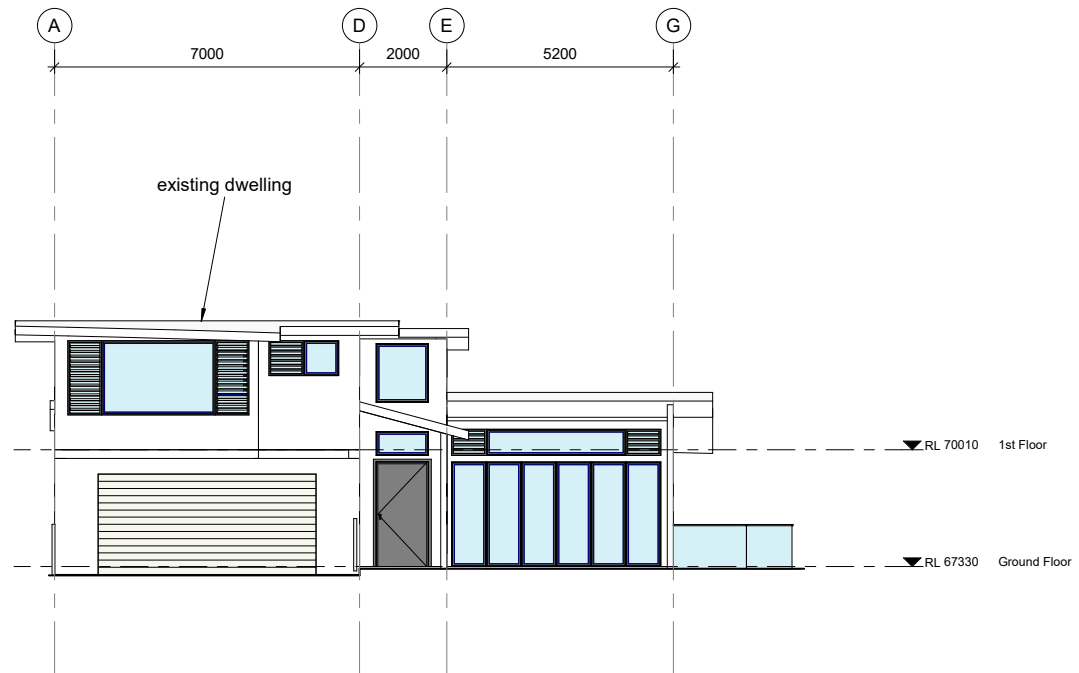
All work to be carried out by suitably licensed and qualified tradesmen, and to comply with all relevant standards and Councils requirements.

Main contractor to be responsible for obtaining all necessary inspection certificates.

An approved sedimentation control system to be installed and maintained for the duration of the contract (refer to ESCP).

Smoke alarms are to be fitted in accordance with Building Code of Australia requirements.

Termite protection is to be in the form of a physical barrier (eg Termimesh or similar)
- no chemical barriers to be used.

**NOTE PARTICULARLY**

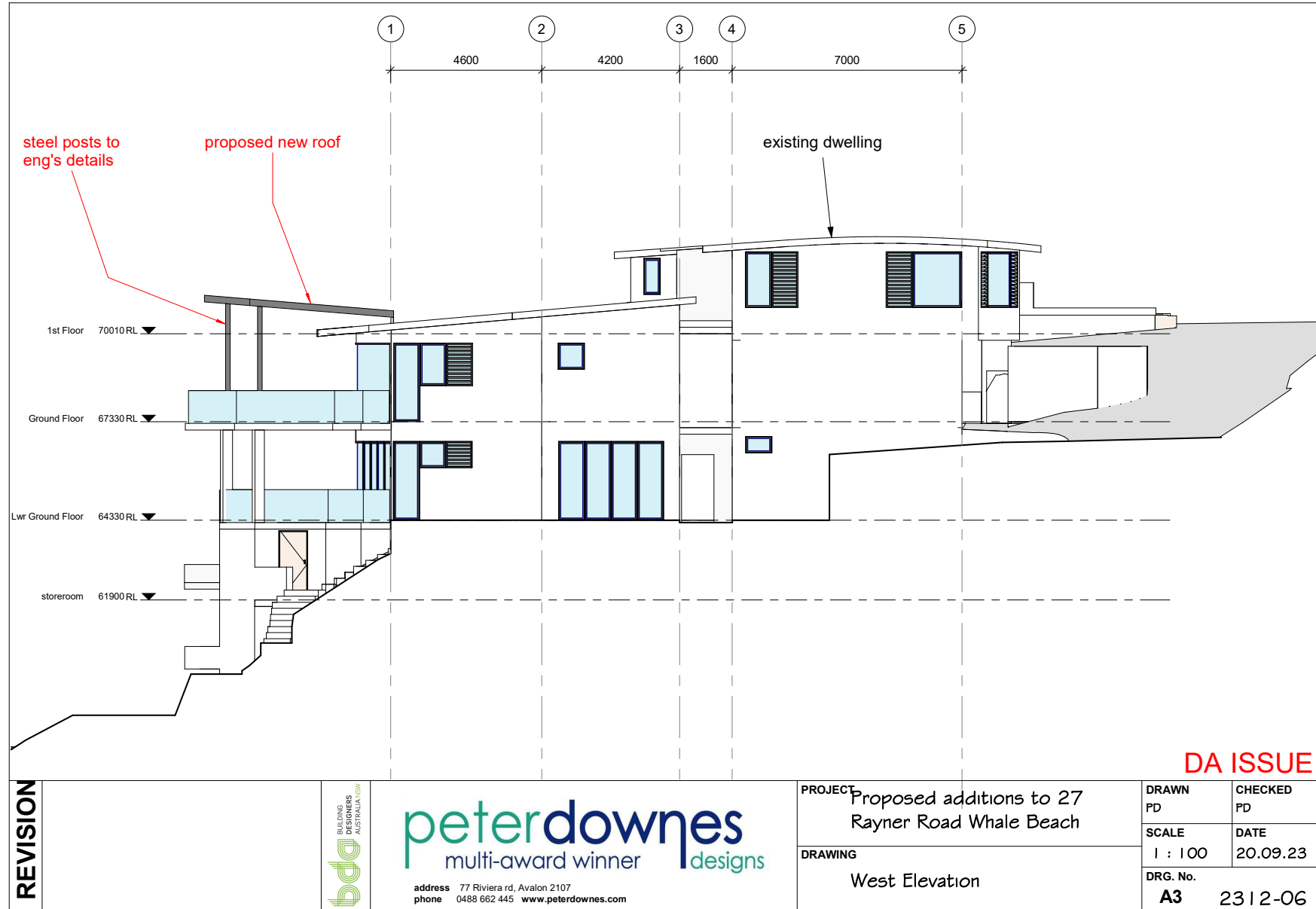
all construction to comply with the Geotech report by EIAustralia

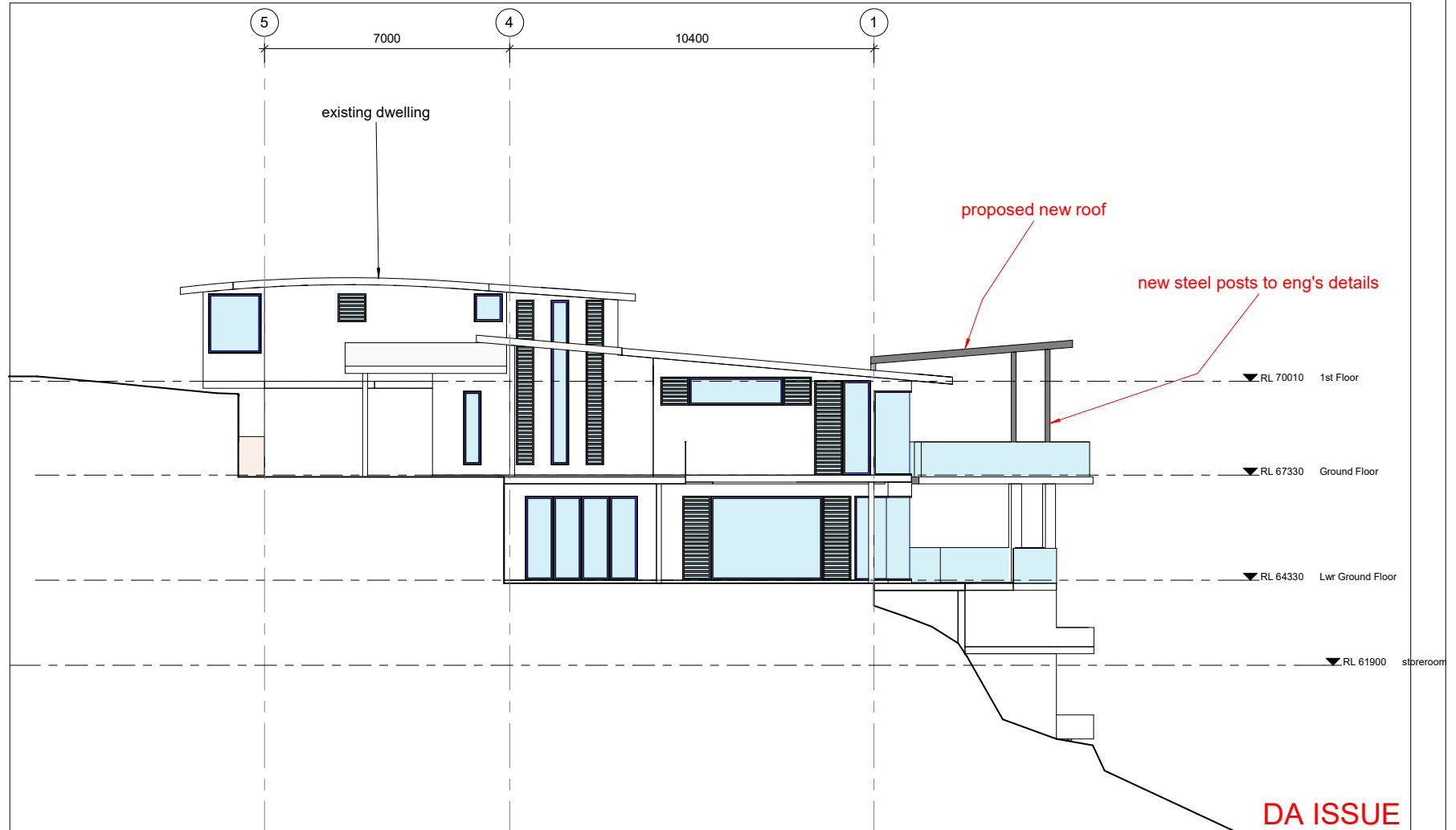
all construction to comply with the Bushfire report prepared by Preparing for Bushfire Protection

dimensions to be confirmed on site by the builder

DA ISSUE

REVISION		 <p>address 77 Riviera rd, Avalon 2107 phone 0488 662 445 www.peterdownes.com</p>	PROJECT Proposed additions to 27 Rayner Road Whale Beach		DRAWN PD	CHECKED PD
			DRAWING South Elevation and notes		SCALE 1 : 100	DATE 20.09.23
					DRG. No. A3	2312-05





REVISION



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multi-award winner designs

address 77 Riviera rd, Avalon 2107
phone 0488 662 445 www.peterdownes.com

PROJECT
Proposed additions to 27
Rayner Road Whale Beach

DRAWING
East Elevation

DRAWN PD	CHECKED PD
SCALE 1 : 100	DATE 20.09.23
DRG. No. A3 2312-07	



BLACKWATTLE PLANNING

CLAUSE 4.6 Request for variation
PITTWATER LEP 2014
HEIGHT OF BUILDINGS

for alterations and additions to a
dwelling at

**27 Rayner Road
Whale Beach**

Content

- 1.0 Introduction
- 2.0 Pittwater Local Environmental Plan 2014
- 3.0 Variation to Clause 4.3 Height of buildings
- 4.0 Clause 4.6 Exceptions to Development Standards
- 5.0 Conclusion

Figures

- Figure 1 Northern elevation of dwelling
- Figure 2 Zoning Map Pittwater LEP 2014
- Figure 3 Height of Buildings Map Pittwater LEP 2014
- Figure 4 Elevation
- Figure 5 3D Image

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1.0 Introduction

This Clause 4.6 Request for Variation to the Height of Buildings development standard under Pittwater Local Environmental Plan 2014 (PLEP 2014) is prepared by Blackwattle Planning in support of a Development Application for alterations and additions to a dwelling at 27 Rayner Road Whale Beach to be submitted to Northern Beaches Council.

The Development Application includes the following components:

Ground Floor

Replace the existing roof to the ground floor level and provide a new roof over the existing ground floor level balcony.



Figure 1: Existing ground floor level balcony over which the new roof is proposed **Source:** Blackwattle Planning

This document demonstrates that compliance with the Height of Buildings Development Standard of PLEP 2014 is unreasonable and unnecessary in the circumstances of this case and that there are sufficient environmental planning grounds to justify the contravention of the development standard.

2.0 Pittwater LEP 2014

No. 27 Rayner Road Whale Beach (the site) falls within the area to which PLEP 2014 applies. The site contains an existing dwelling over two and three levels with basement storage. The site is known legally as Lot 2 in DP538625, and has an area of 785.2sqm. The site is accessed from Rayner Road via a right of carriageway which traverses the rear of the site and neighbouring sites.

Under **Clause 2.2** of PLEP 2014, the site is zoned C4 Environmental Living as shown in Figure 2 below. The proposal to construct alterations and additions to the dwelling is permissible with consent in the C4 Zone

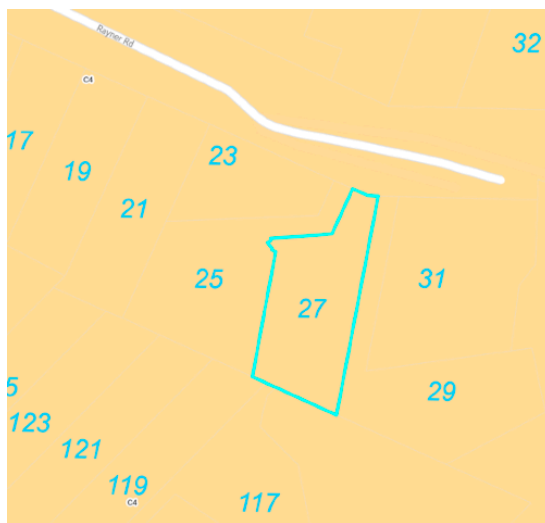


Figure 2: The site outlined red on map indicating zone C4 Environmental Living, Source: **Northern Beaches Online Mapping**

Clause 4.3 of PLEP 2014 restricts the height of development on the site in accordance with the Height of buildings Map (at Figure 3 below) to 8.5m. Clause 4.3 is a development standard.



Figure 3: The site outlined in red on map indicating Category I, 8.5m Height limit, Source: **Northern Beaches Online Mapping**

Clause 4.6 of PLEP 2014 enables the consent authority to grant consent to development even though the development does not comply with a development standard. The purpose of the Clause is to allow flexibility in the application of certain development standards which may in turn result in better outcomes.

3.0 Variation to Clause 4.3 Height of buildings

This written request seeks to justify the variation to Clause 4.3 Height of buildings development standard in PLEP 2014.

PLEP 2014 defines building height as follows:

building height (or **height of building**) means—

- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or
- (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

The highest point of the proposed new roof achieves a maximum height of 11.3m above the existing excavated ground level. The variation to the 8.5m Height of buildings development standard sought is 33%.

Figure 4 below indicates the roof height as measured from the existing ground line immediately below its highest point. The diagram also demonstrates the new roof sits at a level below the highest points of the remaining roof.

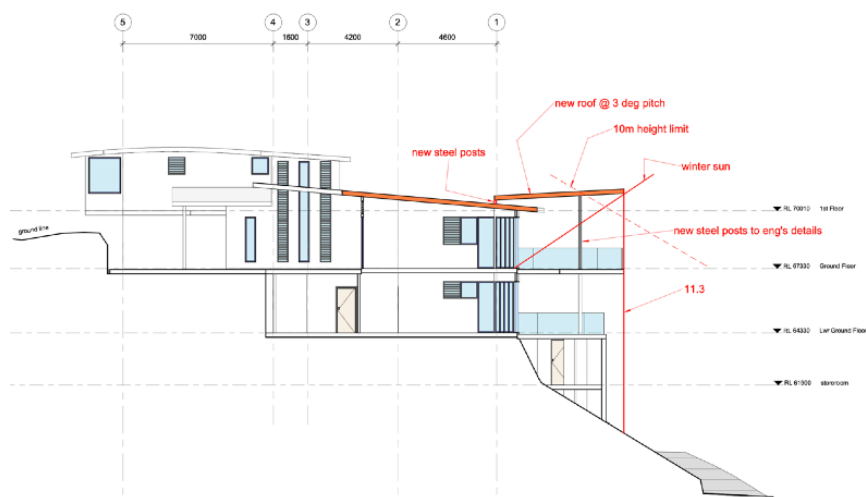


Figure 4: Elevation showing extent of height breach at the northern leading edge of the proposed new roof, and the steep fall of the landform below. **Source:** Peter Downes Designs

4.0 Clause 4.6 Exceptions to Development standards

The objectives of Clause 4.6 are set out in subclause (1) as follows:

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

Decisions of the NSW Land and Environment Court have established that Clause 4.6(1) is not an operational clause.

Clause 4.6(2) is the enabling clause that permits development consent to be granted to a development that contravenes a development standard imposed by PLEP 2014. As the Height of Buildings is a development standard and is not expressly excluded from the operation of the clause, a variation may be granted, subject to the remaining subclauses of Clause 4.6 being satisfied.

4.1 Clause 4.6(3) of PLEP 2014 provides that:

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

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

This written request addresses these requirements in turn, having regard for relevant key decisions of the NSW Land and Environment Court that have informed the approach to the application of Clause 4.6

4.2 Clause 4.6(3)(a) demonstrating that *compliance with the development standard is unreasonable or unnecessary in the circumstances of the case*

The decision in *Wehbe v Pittwater Council 2007* establishes five ways that an applicant may commonly demonstrate that this clause is achieved. The decision also establishes that it may be sufficient to establish only one way.

The first of those pathways is to demonstrate that *the objectives of the development standard are achieved notwithstanding non-compliance with the standard*. This request relies on this pathway.

The objectives of the Height of Buildings development standard are set out below, together with a discussion of how the objectives are met by the proposal, notwithstanding the variation to the standard.

4.2.1 (a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,

The site is located within the Palm Beach Locality. Pittwater 21 DCP provides a locality statement setting out the desired character of the locality. Parts of the statement relevant to a single dwelling are as follows:

Desired Character

The Palm Beach locality will remain primarily a low-density residential area with dwelling houses in maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape...

Future development will maintain a building height limit below the tree canopy and minimise bulk and scale whilst ensuring that future development respects the horizontal massing of the existing built form. Existing and new native vegetation, including canopy trees, will be integrated with the development. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards.

A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, to provide feed trees and undergrowth for koalas and other animals, and to enhance wildlife corridors.

.....

Comment: The proposed new roof has been designed to minimise bulk and scale through its low profile form, and relying on steel posts of minimal dimension. The space above the balcony will remain open and unenclosed on all sides. Because of the location of the roof, above a portion of very steep terrain, but below the remaining levels of the dwelling, the new roof will not interrupt the visual catchment, and will remain below the canopy of trees in the vicinity of the site.

The new roof over the balcony provides a shade element that is not only critical for thermal efficiency and amenity in an exposed location, but also provides additional modulation as anticipated by the locality statement.

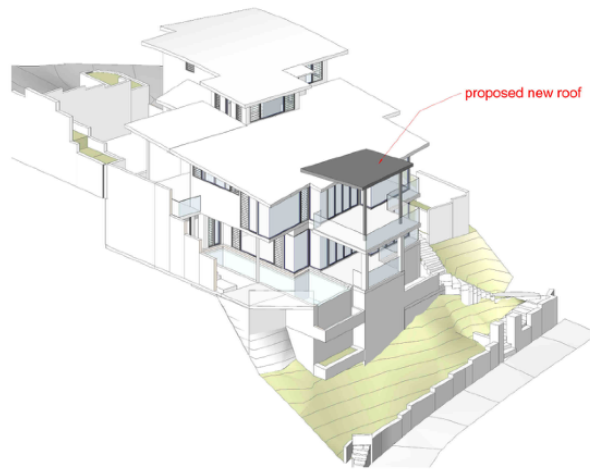


Figure 5: The above 3D image demonstrates the minimal bulk and scale of the proposed roof over the ground floor balcony, and the minor nature of the structure in the context of the existing dwelling. Source: Peter Downes Designs

4.2.2 (b) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*

Comment: The new roof remains substantially below the highest points of the existing roof at ground floor and first floor levels. Dwellings immediately to the east of the site are on more elevated land and higher RL's, and the dwelling immediately to the west has a ridgeline with similar RL's to the proposed new roof. The new roof is consistent with development generally in Whale Beach, which is often on steeply sloping land.

4.2.3 (c) *to minimise any overshadowing of neighbouring properties,*

Comment: Shading of neighbours is minimal because of the optimal orientation of the dwelling. The low profile structure will cast minimal shadow upon neighbouring dwellings, which will both maintain compliant existing sunlight levels to living areas and private open space.

4.2.4 (d) *to allow for the reasonable sharing of views*

Comment: The fall of the land, relative levels of neighbouring dwellings, and low profile design of the new roof ensures that view lines to the east and west remain optimised for neighbours. The primary views of dwellings in the vicinity are to the north, north-east, and north-west, and these views will remain uninterrupted.

4.2.5 (e) *to encourage buildings that are designed to respond sensitively to the natural topography,*

Comment: The dwelling retains stepped floor plates and the use of low profile structural elements ensures that overall the dwelling design is responsive to the steep terrain.

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

Comment: By not exceeding the height of the existing dwelling, the proposed design maintains the complimentary visual contribution of the dwelling in the highly scenic context. A strong landscape presence on the site is maintained and enhanced and ensures the dwelling sits unobtrusively in the highly vegetated context. No heritage conservation areas or items will be affected.

4.2.7 Conclusion under Clause 4.6 (3)(a)

Having regard to the consistency of the proposed development with the objectives of the Height of Buildings development standard, compliance with the standard is found to be unreasonable and unnecessary in the circumstances.

4.3 **Clause 4.6(3)(b) demonstrating that *there are sufficient environmental planning grounds to justify contravening the standard***

Clause 4.6(3)(b) requires that *sufficient environmental planning grounds* be demonstrated to justify contravening the development standard. As established in relevant caselaw, the sufficient grounds must relate to the circumstances of the proposed development and focus on the relevant aspect of the development that contravenes the standard.

In this case, that part of the proposal which exceeds the development standard is the roof over the ground floor balcony. The environmental planning grounds that justify the exceedance of the development standard are as follows:

Topography

- The steep topography of the site is such that despite a significant stepping of the dwelling, the new roof will project beyond the 8.5m height limit.
- The majority of the non-compliance arises from the significant fall of the land directly under the new roof location. The pre and post development ground levels at this point are very steep and the additional height beyond the 8.5m limit reflects the required height needed to achieve levels for building on the steeply sloping land.
- The sloping land within this coastal location results in the ground floor balcony being highly exposed to the elements and the new roof provides much needed relief from sun and heat, and improved thermal efficiency for the dwelling as a whole.

Alternative design

- Alternative designs that may reduce the variation have been explored. Pitching the new roof to fall to the north would still require a variation to the height limit, albeit by a lesser amount, however this design cannot efficiently dispose of stormwater. The proposed roof which falls minimally from north to south allows the dwelling to utilise its existing stormwater system and avoid additional drainage infrastructure.

Context

- Despite the variation proposed, the context of the new roof is that it has minimal presence in the visual catchment. As ground levels below the new roof are generally obscured from view in the immediate vicinity of Rayner Road, the height variation is unlikely to be perceived by nearby dwellings or from the public place. The new roof will be viewed in the context of the higher the existing roofline, and therefore will not be jarring or obtrusive in the landscape. This is enhanced by the minimal bulk and scale contributed by the low profile structural elements to be used.
- Steep topography is a characteristic of Whale Beach that results in dwellings which to a minor extent breach the 8.5m height limit and the 10m exceptions clause. Whilst the proposed new roof extends beyond the 10m by a small amount, its context is consistent with development in the vicinity which also benefit from these clauses and the resulting structure will therefore not be inconsistent with the character of the locality.

4.3.1 Objects of the Environmental Planning and Assessment Act

In demonstrating sufficient environmental planning grounds, it is noted that notwithstanding the contravention of the maximum height standard, the design fulfils the following objects of the Environmental Planning and Assessment Act 1979:

(g) to promote good design and amenity of the built environment,

(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment.

4.3.2 Conclusion under Clause 4.6(3)(b)

We believe the above environmental planning grounds are sufficient to justify the exceedance of the height of buildings development standard in these specific circumstances. Overall, the above grounds, together with an absence of impact demonstrates sufficient environmental planning grounds to justify the variation of the standard as proposed.

4.4 **Clause 4.6(4)(a)(i) The written request adequately addresses the matters required to be demonstrated by subclause (3)**

This written request comprehensively addresses the matters required to be demonstrated by subclause (3).

4.5 Clause 4.6(4)(a)(ii) *The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out*

4.5.1 Consistency with objectives of development standard

As outlined in paragraphs 4.2 of this document, the proposed development notwithstanding the exceedance of the height limit is found to be consistent with the objectives of the Height of buildings development standard.

4.5.2 Consistency with objectives of the C4 Environmental Living Zone

The objectives of this zone and the manner in which the objectives are achieved by the proposed development are as follows:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values; and,*
- *To ensure that residential development does not have an adverse effect on those values.*

Comment: The site has significant aesthetic value in the visual catchment of Whale Beach. The development maintains the existing height of building, whilst ensuring that the new roof form remains low impact, secondary to its landscape setting, and considerate of views and overshadowing.

- *To provide for residential development of a low density and scale integrated with the landform and landscape.*

Comment: The proposed development remains below the existing RL of the building and respects the existing levels on the site. There is no site disturbance required and the dwelling will maintain its landscaped setting and good relationship with neighbouring dwellings and the public domain.

- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

Comment: The proposed development maintains existing landscaped areas and will continue to enhance the ecological values on the site through additional native planting.

4.6 Clause 4.6(4)(b) *The concurrence of the Planning Secretary has been obtained*

Concurrence is obtained from the Secretary of the Department of Planning in these circumstances through Planning Circular dated 5 May 2020 which established concurrence can be assumed for variations exceeding 10% where a Local Planning Panel is the Consent authority. Advice from the DPIE dated March 2022 permits Clause 4.6

variations greater than 10% to building height to be determined by Council staff under delegation in accordance with Council procedures.

5.0 Conclusion

This document demonstrates that the required tests contained in Clause 4.6 have been met by the proposed development. In particular, that:

- Compliance with the Height of Buildings development standard is unreasonable and unnecessary in the circumstances of the case given that the objectives of Clause 4.3 Height of Buildings have been met; and,
- Sufficient environmental planning grounds have been demonstrated to justify the contravention of the development standard; and,
- The proposed development is found to be in the public interest given its consistency with the objectives of the development standard and of the C4 Environmental Living zone.

In these circumstances the consent authority can be satisfied that it is appropriate to apply the flexibility permitted under Clause 4.6 of PLEP 2014 to vary the Height of Buildings development standard of PLEP 2014 to the extent proposed.

Anna Williams

BTP (Hons) UNSW
B Ec (Soc Sc) USYD

Director

BLACKWATTLE PLANNING

E: anna@blackwattleplanning.com.au

M: 0418622598

ITEM 3.6	MOD2023/0555 - 5 EDGECLIFFE BOULEVARDE COLLAROY PLATEAU - MODIFICATION OF DEVELOPMENT CONSENT DA2018/1373 GRANTED FOR DEMOLITION WORKS, CONSTRUCTION OF A NEW DWELLING HOUSE INCLUDING A SWIMMING POOL
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PURPOSE

To refer the attached application for determination by the discretion of the Executive Manager Development Assessment.

RECOMMENDATION

THAT Council as the consent authority **approves** Development Consent to Mod2023/0555 for Modification of Development Consent DA2018/1373 granted for Demolition works, construction of a new dwelling house including a swimming pool on land at Lot 2 DP 1209331, 5 Edgecliffe Boulevardde COLLAROY PLATEAU, subject to the conditions set out in the Assessment Report.

REPORTING MANAGER	Adam Richardson
TRIM FILE REF	2024/080679
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2023/0555
Responsible Officer:	Michael French
Land to be developed (Address):	Lot 2 DP 1209331, 5 Edgecliffe Boulevardde COLLAROY PLATEAU NSW 2097
Proposed Development:	Modification of Development Consent DA2018/1373 granted for Demolition works, construction of a new dwelling house including a swimming pool
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Michael Frederick Moore Jane Yolande Moore
Applicant:	Michael Frederick Moore
Application Lodged:	17/10/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	24/10/2023 to 07/11/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

EXECUTIVE SUMMARY

This Modification Application seeks to modify Development Consent DA2018/1373. The Modification Application seeks to modify the approved plans and delete a full length privacy screen at the eastern end of the southern elevation, which as designed, extends past the rear wall of the dwelling.

The Modification Application is referred to the Development Determination Panel (DDP) under the Discretion of the Executive Manager.

The subject Modification Application has been publicly exhibited from 24/10/2023 to 07/11/2023. No submissions were received during the notification process.

This report concludes with a recommendation that the DDP grant approval to the Modification Application.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks to modify development consent DA2018/1373 in the following ways:

- Deletion of the entire length of the privacy screen at the eastern end of the southern elevation, that extends past the rear wall of the dwelling.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan - D8 Privacy

SITE DESCRIPTION

Property Description:	Lot 2 DP 1209331 , 5 Edgecliffe Boulevard COLLAROY PLATEAU NSW 2097
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the eastern side of Edgecliffe Boulevard.</p> <p>The site is irregular in shape with a frontage of 14.85m along Edgecliffe Boulevard and a depth of 46.81m. The site has a surveyed area of 679.6m².</p> <p>The site is located within the R2 Low Density Residential zone pursuant to the Warringah Local Environmental Plan 2011 and accommodates a 2-storey dwelling.</p> <p>The site slopes downward toward the eastern boundary.</p> <p>The site has a mix of vegetation throughout. There are no details of any threatened species on site.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by a mix of dwellings within an R2 Low Density Residential zone.</p>

Map:



SITE HISTORY

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

Mod2021/0442 dated 18 October 2021: Modification of Development Consent DA2018/1373 granted for demolition works, construction of a new dwelling house including a swimming pool.
 Mod2021/0240 dated 4 May 2021: Modification of Development Consent DA2018/1373 granted for demolition works construction of a new dwelling house including a swimming pool.
 Mod2020/0605 dated 26 April 2021: Modification of Development Consent DA2018/1373 granted for demolition works, construction of a new dwelling house including a swimming pool.
 DA2018/1373 dated 11 January 2019: Demolition works, construction of a new dwelling house including a swimming pool.

DA2018/1373 proposed an aluminum privacy screen with a masonry column in the same location as the privacy screen that this proposal seeks to delete. Council's review of this application determined that the proposed screen will cause some view loss from the windows on the upper level of the adjoining site at 3A Edgecliffe Boulevard. Subsequently, the Notice of Determination included a condition of consent that required the deletion of this proposed privacy screen from the approved plans. Condition 2, as stipulated in DA2018/1373, reads as follows:

Amendments to the approved plans

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

- All parts of the privacy screen, at the eastern end of the southern elevation, that extend past the rear wall of the dwelling, are to be deleted.
- The paving around the pool (as shown on Landscape Plan L-01 Revision D) is to be reduced to match Plan No. D12 - Landscape Area. This is to ensure the site maintains adequate landscaped open space.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

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

The following modification dated 26 April 2021 (Mod2020/0605), approved a request for an amended privacy screen at the eastern end of the southern elevation, subject to Condition 1A specifying the screen's blade angle and width, such that view loss from the windows of the upper level of the adjoining site at 3A Edgecliffe Boulevard was acceptable. This condition reads as follows:

1A Non-trafficable area to balcony at First Floor Level

The proposed privacy screen at the southern elevation is to be amended to provide the following:

- Width between louvres of 200mm
- Blades at an angle of 75 degrees toward the east
- A length of 1.2m along the southern elevation (reduced from 1.8m)

Details are to be provided prior to the issue of Construction Certificate.

Reason: To ensure retention of views.

The proposed angling of the privacy screen approved by Mod2020/0605 aimed to balance privacy and view sharing. However, the applicant argues that compliance with Council's condition compromises the intended privacy to and from the subject site. Consequently, they seek the removal of the screen, reverting to the original DA2018/1373 approval, whereby there is no privacy screening at the eastern end of the southern elevation, that extends past the rear wall of the dwelling. Assessment of the privacy impact resulting from this request has been conducted below.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2018/1373, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) - Other Modifications	Comments
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	<p>Yes</p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <ul style="list-style-type: none"> - The proposal does not propose changes that will notably alter existing environmental impact. It is considered that the deletion of the condition will not have an 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 consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2018/1373 for the following reasons:</p> <ul style="list-style-type: none"> - The proposal does not alter the existing Principal Development Standard or Built Form Control calculations. - The proposal does not propose changes that will notably alter existing environmental impact. - The amended application does not alter or expand the extent of existing development.
(c) it has notified the application in accordance with:	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.
(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 under section 72 that requires the notification or advertising of applications for modification of a development consent, and	
(d) it has considered any submissions made concerning	No submissions were received in relation to this application.

Section 4.55(1A) - Other Modifications	Comments
the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider “Prescribed conditions” of development consent. These matters have been addressed via an existing condition of consent.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via an existing condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via an existing condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via an existing condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 24/10/2023 to 07/11/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	Supported without conditions The application is for modification to development consent DA2018/1373. The proposed amendments will not change the landscape outcome approved in DA2018/1373, and as such the original conditions remain. No further conditions are imposed.
NECC (Riparian Lands and Creeks)	Supported without conditions This application was assessed in consideration of: - Supplied plans and reports; - Coastal Management Act 2016; - State Environmental Planning Policy (Resilience and Hazards) 2021; - Relevant LEP and DCP clauses; and - Northern Beaches Council Water management for development policy. Riparian The proposed modification poses no risk to riparian or creek ecosystem health. Same conditions associated with the original DA apply.
Parks, reserves, beaches, foreshore	Supported without conditions No concerns are raised with the proposed modification.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	Supported subject to conditions The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations have been included as a condition of consent.
Aboriginal Heritage Office	Supported without conditions Reference is made to the proposed development at the above area and Aboriginal heritage. No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development. Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)**SEPP (Transport and Infrastructure) 2021**

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who raised no objections.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

The proposal does not alter the existing Principal Development Standard calculations.

Compliance Assessment

Clause	Compliance with Requirements
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

The proposal does not alter the existing Built Form Control calculations.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C9 Waste Management	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E3 Threatened species, populations, ecological communities listed under State or Commonwealth legislation, or High Conservation Habitat	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E5 Native Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
E8 Waterways and Riparian Lands	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment**D8 Privacy**

The deletion of the privacy screen to the southeast of the existing dwelling is considered to align with the requirements and objectives of *Clause D8 Privacy*.

The proposed privacy screen, while initially intended to maintain privacy and amenity, is not considered to achieved the intended outcome due to the positioning and relationship of the subject dwelling and the adjoining dwelling. It has become apparent from the existing site conditions that the screen is not deemed necessary in meeting the privacy requirements as stipulated by *Clause D8 Privacy*. The removal of the privacy screen does not unreasonably limit privacy to or from the subject site.

The overall security for occupants and visitors remains uncompromised despite the removal of the privacy screen. The primary dwelling features remain unchanged and as such, the deletion of the privacy screen will not result in the residents of the subject site being able to directly look into the windows of the adjoining dwelling at 3A Edgecliff Boulevard. Additionally, the removal of the privacy screen is considered to minimise the visual impact of the development when viewed from adjoining sites as it lessens unnecessary building bulk. It is noted that the removal of the privacy screen will result in the residents of 5 Edgecliff Boulevard having a direct view from the first floor to a large portion of the existing first-floor balcony at 3A Edgecliff Boulevard, and a portion of the ground-floor balcony. Considering the context of the surrounding residential environment, existing layout of surrounding buildings, the steep downward slope toward the rear of the site, and the limited amenity impact of the privacy screen's removal, the proposed privacy impact on the adjoining site is deemed acceptable in this instance.

Furthermore, no objections from adjoining neighbors at 3A Edgecliff Boulevard, were received.

In this regard, the removal of the privacy screen aligns with the applicant's needs, maintains an acceptable level of privacy impact, and preserves the security of occupants and visitors, all of which are in accordance with the stipulations of *Clause D8 Privacy*.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS**Northern Beaches Section 7.12 Contributions Plan 2022**

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

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

PLANNING CONCLUSION

This proposal, for the Modification of Development Consent DA2018/1373 has been referred to the Development Determination Panel (DDP) due to Manager Discretion.

The subject development application has been publicly exhibited from 24/10/2023 to 07/11/2023 and no concerns were raised via submission.

The critical assessment issues involve the deletion of the entire length of the privacy screen at the eastern end of the southern elevation.

The proposal has been recommended for approval.

REASON FOR DETERMINATION

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2023/0555 for Modification of Development Consent DA2018/1373 granted for Demolition works, construction of a new dwelling house including a swimming pool on land at Lot 2 DP 1209331,5 Edgecliffe Boulevard, COLLAROY PLATEAU, subject to the conditions printed below:

Modification Summary

The development consent is modified as follows:

MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
Mod2023/0555	The date of this notice of determination	Modification of Development Consent DA2018/1373 granted for demolition works, construction of a new dwelling house including a swimming pool
Mod2021/0442	18 October 2021- Refused	Modification of Development Consent DA2018/1373 granted for demolition works, construction of a new dwelling house including a swimming pool
Mod2021/0240	4 May 2021	<p>Modification of Development Consent DA2018/1373 granted for Demolition works construction of a new dwelling house including a swimming pool</p> <p>A. Modify Condition 24 - Authorisation of Legal Documentation Required for Onsite Detention to read as follows:</p> <p><i>An application for the authorization of legal documents is to be submitted to Council for approval. The application is to include the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) with a copy of the Works-as-Executed plan(details overdrawn on the copy of the approved drainage plan), hydraulic engineers certification and photographs of the completed system.</i></p> <p><i>Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of a final Occupation Certificate.</i></p> <p><i>Reason: To create encumbrances on the land.</i></p> <p>B. Modify Condition 25 -Registration of Encumbrances for On-site Stormwater Detention to read as follows:</p> <p><i>A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of a final Occupation Certificate.</i></p> <p><i>Reason: To identify encumbrances on land.</i></p> <p>C. Modify Condition 27 Positive Covenant and Restriction as to User for On-site Stormwater Detention to read as follows:</p> <p><i>A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A restriction as to user shall be created on the title over the on-site stormwater detention system, restricting any alteration to the levels and/or any construction on the land. The terms of such restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Council prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such restriction.</i></p> <p><i>Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of a final Occupation Certificate.</i></p>

		Reason: To ensure the on-site detention and/or pump system is maintained to an appropriate operational standard.
Mod2020/0605	14 April 2023	<p>Modification of Development Consent DA2018/1373 for demolition works, construction of a new dwelling house including a swimming pool</p> <p>B. Add Condition 1A Design changes to Privacy Screen to read as follows:</p> <p><i>The proposed privacy screen at the southern elevation is to be amended as follows:</i></p> <p>a) Width between louvres of 200mm b) Blades at an angle of 15 degrees from north, in a NNE to SSW orientation with the blades allowing for views to the north to be retained from 3A Edgecliff Boulevard. c) The structure is to have a maximum length of 1600mm including the pier/column, protruding from the southern elevation</p> <p><i>Details demonstrating compliance shall be submitted to the Certifier prior to the issue of Construction Certificate.</i></p> <p>Reason: To ensure retention of views.</p> <p>C. Add Condition 1B Non-trafficable area to balcony at First Floor Level to read as follows:</p> <p><i>The proposal is to amended as follows:</i></p> <p>a) The proposed glass balustrade around the perimeter of the flat roof is to be deleted. b) The proposed planter boxes are to be deleted. c) The flat roof area is not to be accessible except for maintenance purposes. d) The glass opening from the sitting room is to be fixed glazing.</p> <p><i>Details demonstrating compliance shall be submitted to the Certifier prior to the issue of Construction Certificate.</i></p> <p>Reason: To minimise amenity impact by providing reasonable physical separation between the neighbour and the proposed balcony.</p> <p>D. Add Condition 1C Restriction on height of southern side boundary fence to read as follows:</p> <p><i>The masonry fence is to be wholly located within, and not constructed on the property boundary. The masonry fence is to be stepped down the slope in following intervals (measurements starting from the bottom of the stairs adjacent to the corner of the Lower ground Floor Rumpus area – DA03 Lower Ground Floor dated 29/10/20):</i></p> <ul style="list-style-type: none"> • For an extent of 2 metres: RL77.5 • For an extent of 2 metres: RL77.3 • For an extent of 2 metres: RL76.9 • For an extent of 1 metre: RL76.5 • For an extent of 1 metre: RL76.1 • For an extent of 1 metre: RL75.7 • For an extent of 1 metre: RL75.5 <p><i>Each elevation of the fence is also to be provided with a rendered/painted finish. Details are to be provided prior to the issue of a Construction Certificate. A surveyors certificate is to be provided at the completion of works to ensure compliance with the location and heights.</i></p> <p>E. Modify Condition 2 Amendments to the approved plans to read as follows:</p> <p><i>The following amendments are to be made to the approved plans:</i></p> <ul style="list-style-type: none"> • The paving around the pool (as shown on Landscape Plan L-01 Revision D) is to be reduced to match Plan No. D12 - Landscape Area. This is to ensure the site maintains adequate landscaped open space. <p><i>Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.</i></p> <p>Reason: To ensure development minimises unreasonable impacts upon surrounding land.</p> <p>F. Modify Condition 24 Authorisation of Legal Documentation Required for Onsite Detention to read as follows:</p> <p><i>An application for the authorization of legal documents is to be submitted to Council for approval. The application is to include the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) with a copy of the Works-as-Executed plan(details overdrawn on the copy of the approved drainage plan), hydraulic engineers</i></p>

	<p>certification and photographs of the completed system.</p> <p>Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.</p> <p>Reason: To create encumbrances on the land.</p> <p>G. Modify Condition 25 Registration of Encumbrances for On-site Stormwater Detention to read as follows:</p> <p>A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.</p> <p>Reason: To identify encumbrances on land.</p> <p>H. Modify Condition 27 Positive Covenant and Restriction as to User for On-site Stormwater Detention to read as follows:</p> <p>A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.</p> <p>A restriction as to user shall be created on the title over the on-site stormwater detention system, restricting any alteration to the levels and/or any construction on the land. The terms of such restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Council prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such restriction.</p> <p>Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.</p> <p>Reason: To ensure the on-site detention and/or pump system is maintained to an appropriate operational standard.</p>
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Modified conditions

A. Modify Condition 1A Design changes to Privacy Screen to read as follows:

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

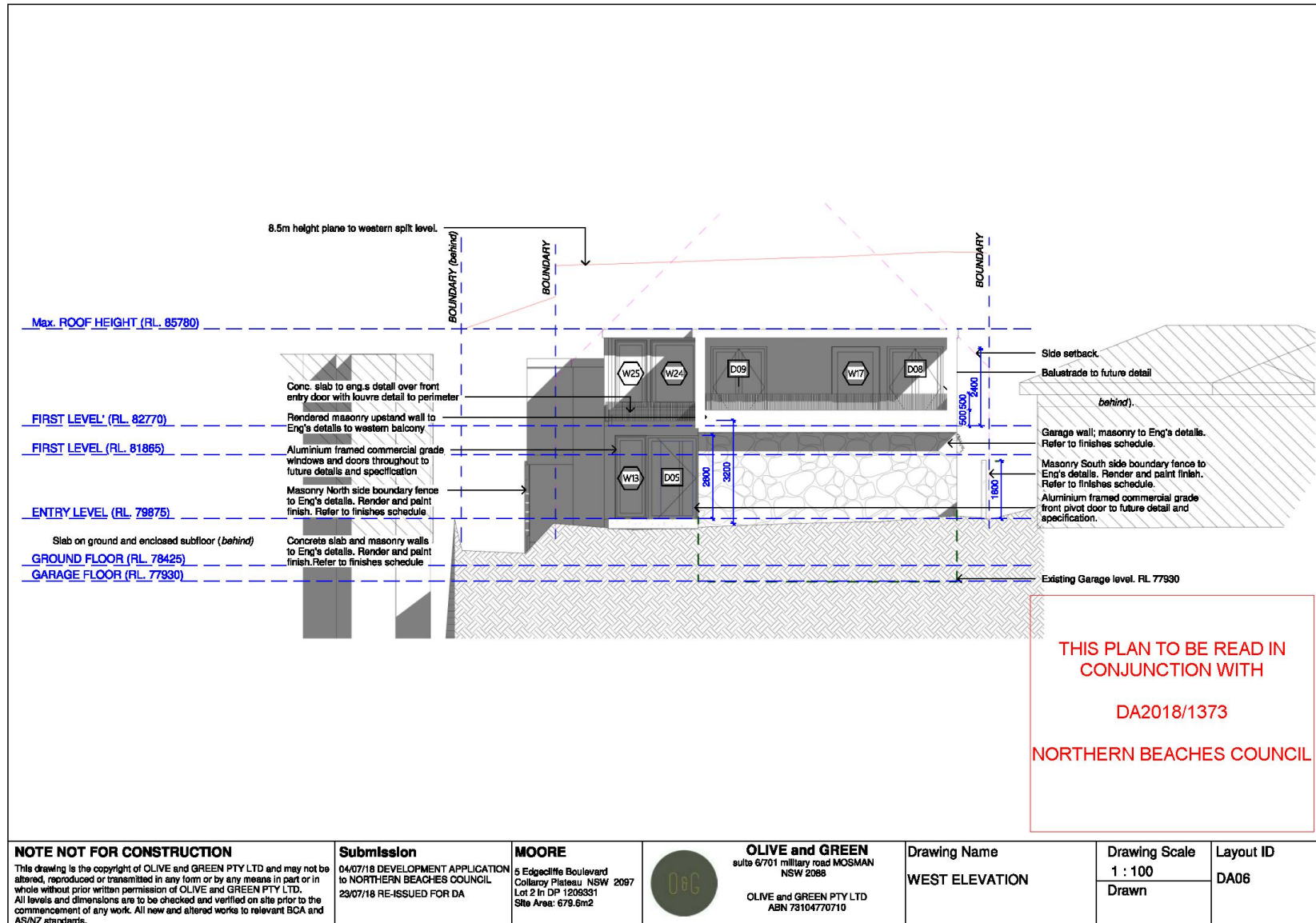
- The approved privacy screen at the eastern end of the southern elevation, that extend past the rear wall of the dwelling, is to be deleted from the approved plans, covering the entire length of the screen.

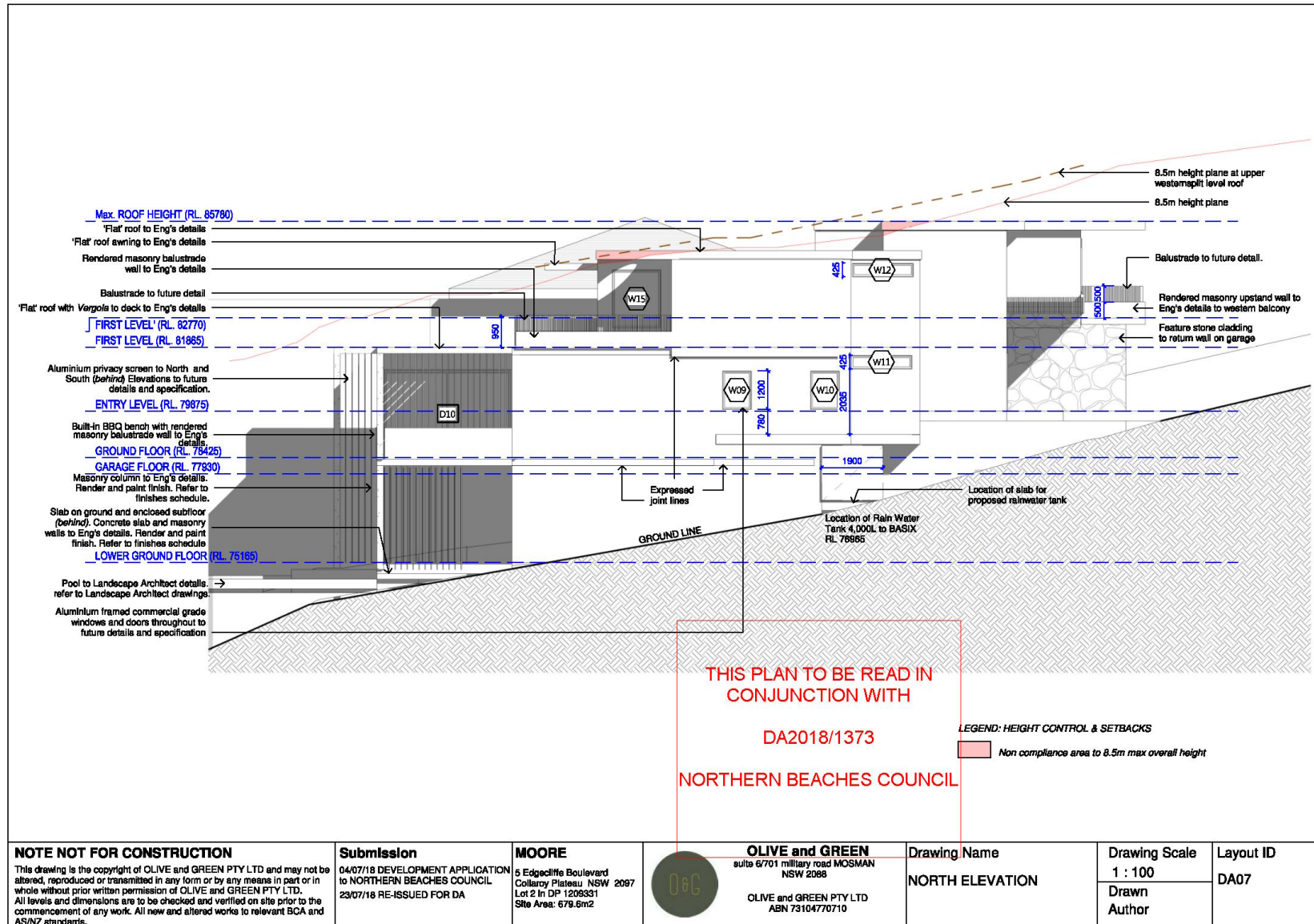
Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

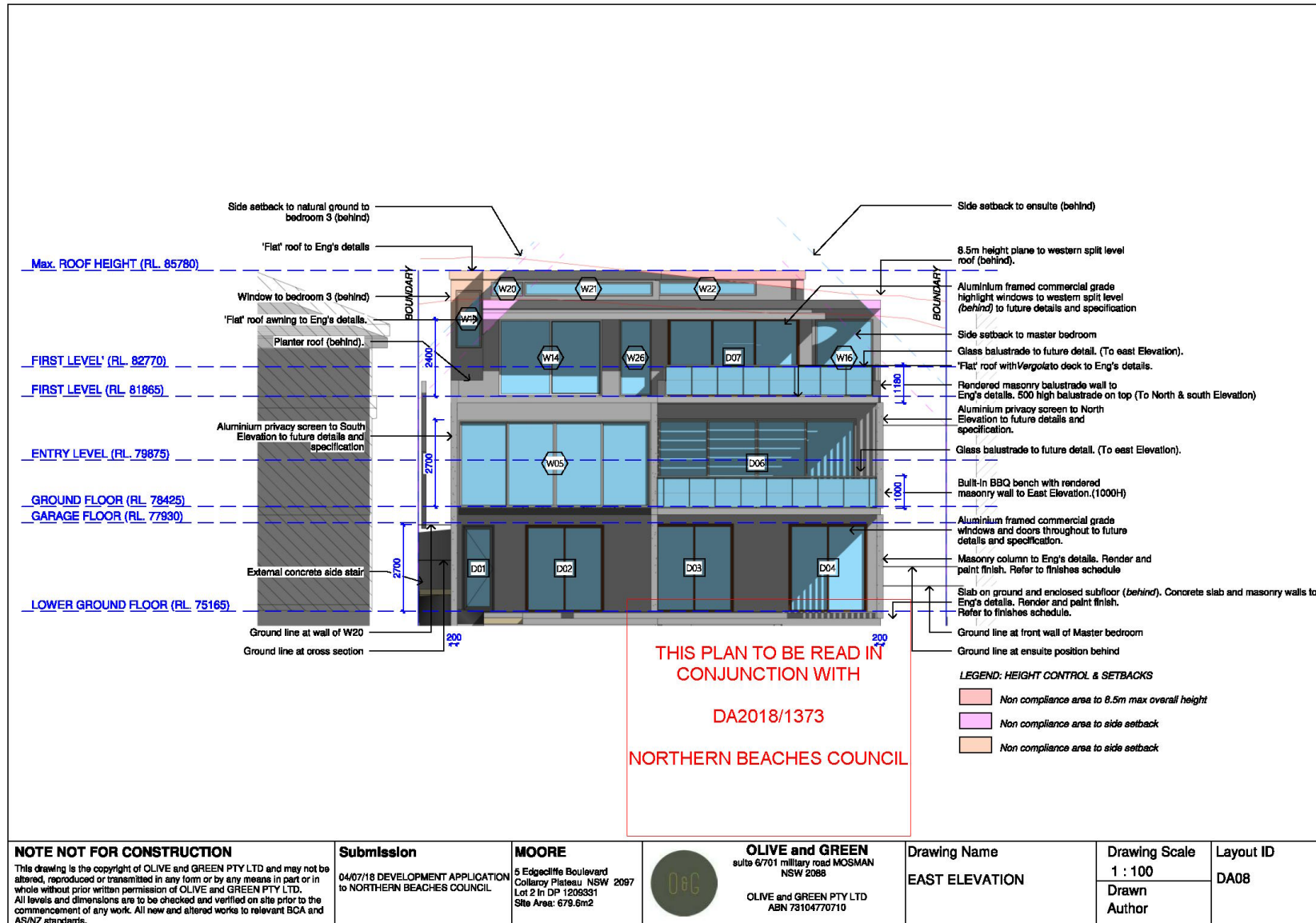
Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development.

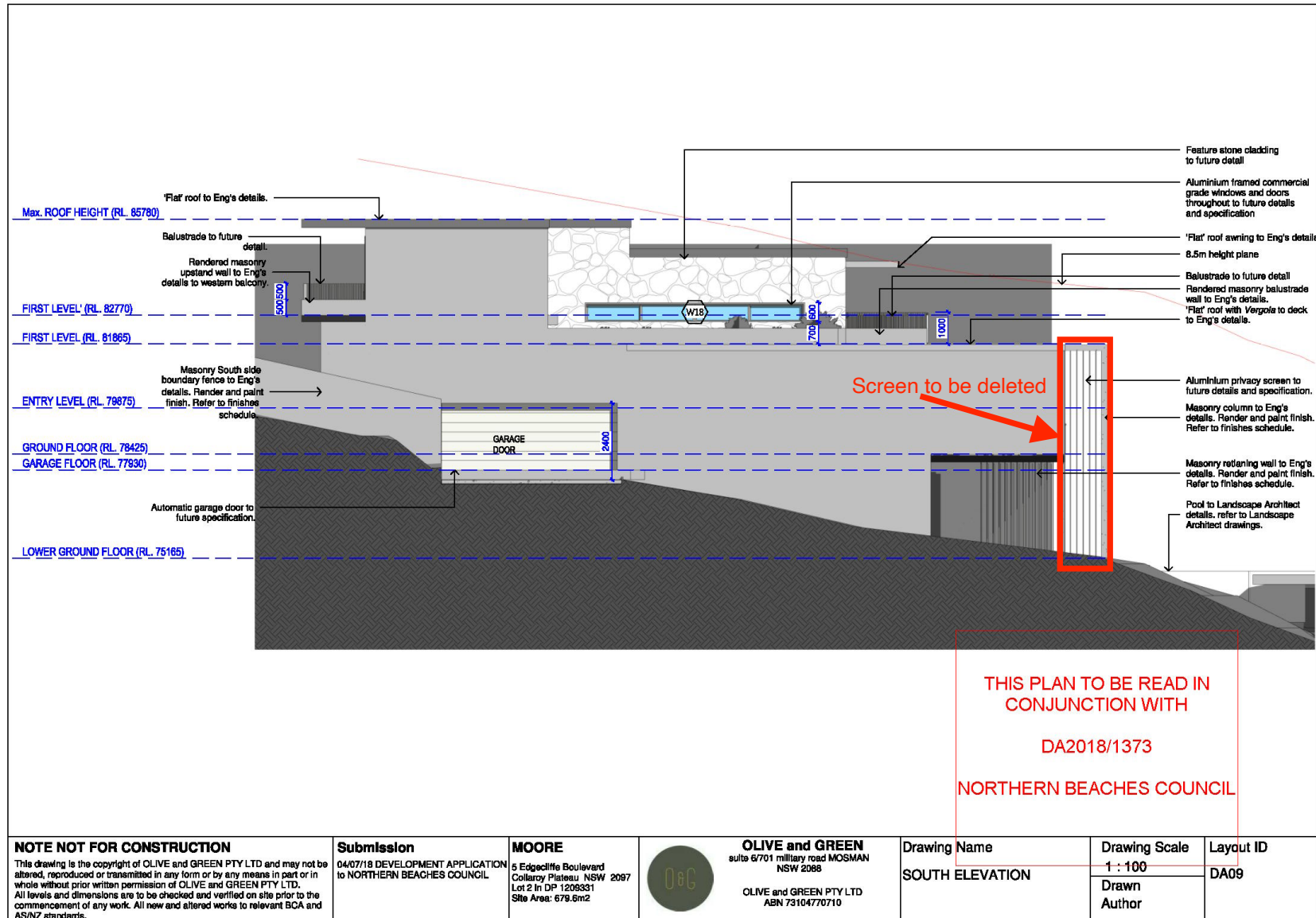
In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

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









ITEM 3.7	DA2023/1578 - 21 MOORE STREET CLONTARF - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL
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PURPOSE

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

RECOMMENDATION

- A. That Council as the consent authority, vary the Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT Council as the consent authority **approves** Development Consent to DA2023/1578 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 7 DP 2610, 21 Moore Street CLONTARF, subject to the conditions set out in the Assessment Report.

REPORTING MANAGER	Adam Richardson
TRIM FILE REF	2024/082893
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations 3 ↓ Clause 4.6

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/1578
Responsible Officer:	Phil Lane
Land to be developed (Address):	Lot 7 DP 2610, 21 Moore Street CLONTARF NSW 2093
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Rod Jonathon Pindar Natalie Chantal Pindar
Applicant:	Rod Jonathon Pindar
Application Lodged:	08/11/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	14/11/2023 to 28/11/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.4 Floor space ratio: 33.26%
Recommendation:	Approval
Estimated Cost of Works:	\$ 810,000.00

EXECUTIVE SUMMARY

This report is submitted to the Northern Beaches Development Determination Panel (DDP) for the consideration of Development Application DA2023/1578 for alterations and additions to a dwelling house including a swimming pool.

The maximum Floor Space Ratio (FSR) for the site is 0.4:1 (196.6m² of gross floor area). The proposed FSR equates to 0.53:1 (262m²), which represents a 33.26% variation to the development standard. Any variations to a principal development standard that are greater than 10% must be referred to the DPP for determination if the development relates to a class 1 or 10 structure.

Notwithstanding, Clause 4.1.3.1 - Exceptions to FSR for Undersized Lots of the Manly DCP 2013 stipulates that the 0.4:1 FSR requirement is based off an average site area of 750m². The site is an undersized allotment, being only 491.5m² in area. When applying a gross floor area amount to an average site area of 750m², the proposed FSR would be 0.35:1, which complies with the 0.4:1 requirement set by the DCP. The applicant has demonstrated that compliance with the FSR standard is both unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the variation to Clause 4.4 - Floor Space Ratio of Manly LEP 2013, having regard to the DCP provisions.

The application was notified for a period of fourteen (14) days and no submissions were received in response.

The proposed development involves variations to the DCP provisions that pertain to wall height, side setbacks and total open space. However, these variations do not result in any unacceptable streetscape or amenity impacts, subject to recommended conditions.

The proposed redevelopment represents a modernised and improved built form on the site and is compatible and consistent with surrounding residential developments.

Accordingly, it is recommended that the application be approved by the DDP, subject to the recommended conditions attached to this report.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for alterations and additions to an existing dwelling house including a new swimming pool. Specifically, the works consist of:

"Lower Level

- *Internal alterations utilising existing under-croft space to enlarge the Bathroom and Laundry.*
- *Conversion of existing under-croft space to a new Bedroom (Bed 5) including a new window.*
- *A minor (1.2m) extension to the south (rear) to allow for an enlarged Bed 4.*
- *New glazed doors to the south (rear) elevation.*
- *A new window to the existing Rumpus Room.*

Ground Level

- *Infill of the existing porch to allow for a new Bedroom (Bed 3).*
- *Internal alterations to convert an existing Bedroom into a new entry space and provide more internal area to Bed 2.*
- *Internal alterations along the eastern portion of the house to allow for a new Ensuite and Walk-In-Robe (to Bed 1) and a new Bathroom.*
- *A minor (1.1m) extension to the south (rear) to allow for an enlarged Bed 1.*
- *Reconfiguration of the Kitchen and Dining Area with a minor extension (1.75m) to allow for an enlarged Kitchen and Dining space.*
- *Relocation of windows to Kitchen/Dining and Bed 3 and enlarged windows to Bed 2 and Entry.*

Upper Level

- *A new balcony to replace the existing with new pergola over.*
- *Relocation of window to Living to improve outlook and privacy to and from neighbours (No 23).*

Site

- *A new car port to replace the existing which is outdated and in poor condition.*
- *Alterations to the front courtyard to relocate the entry gate and allow access to a new front door.*
- *New landscaping to the front courtyard.*
- *New landscaping to the rear garden including a new deck and terrace to the rear to replace the existing terrace.*
- *Demolition of the existing swimming pool and construction of a new concrete pool within levelled lawn area at the rear of the site with timber pool deck (consistent with approved DA).*
- *New side retaining walls and timber fences to the east and west (consistent with approved DA).*
- *New stairs to both side passages to suit new rear garden levels and allow improved ventilation and damp proofing to the house.*
- *New rear retaining wall to facilitate leveling of rear yard with dense planting along rear boundary (consistent with approved DA)."*

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Local Environmental Plan 2013 - 5.21 Flood planning
 Manly Local Environmental Plan 2013 - 6.4 Stormwater management
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Local Environmental Plan 2013 - 6.12 Essential services
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features
 Manly Development Control Plan - 4.4.2 Alterations and Additions
 Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

SITE DESCRIPTION

Property Description:	Lot 7 DP 2610 , 21 Moore Street CLONTARF NSW 2093
Detailed Site Description:	<p>The subject site consists of one allotment located on the southern side of Moore Street, Clontarf.</p> <p>The site is regular in shape with a frontage of 12.215m and a depth of 40.325m. The site has a surveyed area of 491.5m².</p> <p>The site is located within the R2 Low Density Residential zone pursuant to Manly LEP 2013 and accommodates a three storey dwelling house with an attached double carport within the front setback area and an in-ground swimming pool within the rear yard.</p> <p>The site is devoid of any native canopy planting and contains shrubbery within the rear yard southward of the swimming pool. Additionally, screen planting is located along the front boundary adjacent to the paved courtyard.</p> <p>The site experiences a fall of approximately 7.1m that slopes away from the north-eastern front corner towards the south-eastern rear corner.</p> <p>A sandstone rock shelf runs diagonally across the property between the footprint of the dwelling house and swimming pool. The rear terrace sits on top of the rock shelf and is sited approximately 2.5m above the pool area below.</p> <p>Description of Surrounding Development</p> <p>The surrounding built environment is generally characterised by detached low density residential development (i.e. dwelling houses), typically 2-3 storeys in height. Existing development represents both older and modern housing stock.</p>

Map:



SITE HISTORY

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

- **Development Application No. 170/88** for additional upper balcony approved by Council staff under delegated authority on 30 June 1998.
- **Development Application No. DA2022/0005** for alterations and additions to a dwelling house including a swimming pool approved by Council via DDP on 13 July 2022.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 14/11/2023 to 28/11/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The proposal is supported with regard to landscape issues.</p> <p>Council's Landscape Referral section have considered the application against the Manly Local Environment Plan, and the following Manly DCP 2013 controls (but not limited to):</p> <ul style="list-style-type: none"> • 3.3.1 Landscaping Design • 3.3.2 Preservation of Trees or Bushland Vegetation • 4.1.5 Open Space and Landscaping, including 4.1.5.2 (c) Minimum Tree Plantings • 4.1.9 Swimming Pools, Spas and Water Features <p>The existing property contains no prescribed trees, rather exempt vegetation that can be managed or removed at the discretion of the applicant without consent. All neighbouring trees and vegetation must be protected during works, subject to the imposed conditions.</p> <p>Any visual impact or privacy issues to adjoining properties resulting from the increased levels in the rear setback and the masonry walls along the boundaries, will be assessed and determined by the Assessing</p>

Internal Referral Body	Comments
	Planning Officer. The landscape planting proposal is generally supported and all proposed planting shall be installed in accordance with the requirements outlined in the conditions of consent. Under MDCP 4.1.5.2 (c) Minimum Tree Plantings, one native tree shall be required for installation within the property boundaries.
NECC (Development Engineering)	The proposed development does not require OSD and the submitted stormwater management plan is acceptable. The existing driveway crossing is to remain which is also acceptable. Development Engineering support the proposal, subject to conditions as recommended.
External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)**SEPP (Building Sustainability Index: BASIX) 2004**

A BASIX Certificate has been submitted with this application (see BASIX Certificate No. A1374132, dated 27 October 2023). A condition has been included with this consent to ensure compliance with the aforementioned BASIX Certificate.

SEPP (Transport and Infrastructure) 2021Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021**Chapter 4 – Remediation of Land**

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	8.5m	7.8m	-	Yes
Floor Space Ratio	0.4:1 (196.6m ²)	0.53:1 (262m ²)	33.26%	No

Compliance Assessment

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

Detailed Assessment**4.6 Exceptions to development standards**Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.4:1 (196.6m ²)
Proposed:	0.53:1 (262m ²)
Percentage variation to requirement:	33.2% (65.4m ²)

The site is subject to a 0.4:1 FSR development standard. The proposed FSR equates to 0.53:1 (262m²), which does not comply with the development standard.

Notwithstanding, Clause 4.1.3.1 - Exceptions to FSR for Undersized Lots of the Manly DCP 2013 stipulates that the 0.4:1 FSR requirement is based off an average site area of 750m². The site is an undersized allotment, being 491.5m² in area. When applying a gross floor area to an average site area of 750m², the proposed FSR would be 0.35:1, which complies with the 0.4:1 requirement.

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicant's written request argues, in part:

Comment:

"The proposed development is for alterations and additions to the existing dwelling including a minor extension to the south (rear) and a relocation of the swimming pool. The new works comply with the building height control for the site and the bulk and scale is of a lesser or consistent scale with surrounding properties.

The proposed variation to the LEP control is 65.4m² or 33.2%, however as the subject site is an existing undersized parcel, clause 4.1.3 of the DCP, permits an FSR calculation based on a 750m² lot size, which equates to 300m² for the site. As noted above, the proposed gross floor area is 262m² and therefore complies with the provision of DCP Clause 4.1.3 having a GFA 38m² less than permitted.

Development Approval has already been granted for the site (DA2022/0005) which approved an area of 284m² (0.58:1 FSR). This new Development Application represents a more modest application with reduced area, height, bulk and scale and retaining a significantly greater portion of the original house."

"There are sufficient grounds to permit the variation of the development standard. The development has been considered below with particular reference to the Objects of the Environmental Planning and Assessment Act 1979, which are accepted as the best gauge of environmental planning grounds. In particular:

Context

- *The area surrounding the subject site is characterised by 2 and 3 storey detached dwelling houses, with a number of dwellings having undergone recent renovations.*
- *The new works propose a compliant building height and has been designed to remain consistent with the character of the existing dwelling, despite the variation to FSR, through design, architectural features and complimentary materials and colour choices.*
- *Variation to the Manly LEP 2013 Cl. 4.4 FSR, control has been the subject of recent precedent for the following developments (with properties nearby the subject site in Clontarf marked in bold text):*

DA2020/1372	19 - 21A Addison Road and 15 Oyama Avenue MANLY NSW 2095	Residential - Alterations and additions	FSR Variation of 20% Control: 0.6:1 (219.42m ²) Proposal: 0.72:1 (263.04m ²)
DA2020/1419	23 Crescent Street FAIRLIGHT NSW 2094	Residential - Alterations and additions	FSR Variation of 21% Control: 0.6:1 (129.5m ²) Proposal: 0.75:1 (162.3m ²)
DA2020/1745	92 Addison Road MANLY NSW 2095	Residential - Alterations and additions	FSR Variation of 31.67% Control: 0.6:1 (187.98m ²) Proposal: 0.79:1 (246m ²)
DA2020/0702	9 Steinton Street MANLY NSW 2095	Residential - Alterations and additions	FSR Variation of 22.5% Control: 0.75:1 (114.225m ²) Proposal: 0.91:1 (140m ²)
DA2020/0821	32 Beatrice Street CLONTARF NSW 2093	Residential - Alterations and additions	FSR Variation of 50.6% Control: 0.4:1 (230.28m ²) Proposal: 0.6:1 (347m ²)
DA2019/1463	95 Gurney Crescent SEAFORTH NSW 2092	Residential - Alterations and additions	FSR Variation of 59.4% Control: 0.4:1 (237.8m ²) Proposal: 0.63:1 (379m ²)
DA2020/0612	19 Sandy Bay Road CLONTARF NSW 2093	Residential - Alterations and additions	FSR Variation of 80% Control: 0.4:1 (111.6m ²) Proposal: 0.72:1 (201m ²)
DA123/2015	2 Moore Street CLONTARF NSW 2093	New dwelling	FSR Variation of 29.2% Control: 0.4:1
DA2019/0506	19 Moore Street CLONTARF NSW 2093	Residential - Alterations and additions	FSR Variation of 8% Control: 0.4:1 (196.2m ²) Proposal: 0.43:1
DA123/2017	88 Cutler Road CLONTARF NSW 2093	Residential - Alterations and additions	FSR Variation of 68.7% Control: 0.4:1 (145.2m ²) Proposal: 0.67:1 (245m ²)
DA2018/2004	92 Cutler Road, CLONTARF NSW 2093	Residential - Alterations and additions	FSR Variation of 12.5% Control: 0.4:1 Proposal: 0.45:1

- The setting and context with similar FSR variations recently approved, demonstrates that a varied FSR is reasonable and that it is consistent with clause 1.3(c) and (d)
- Development Approval has already been granted for the site (DA2022/0005) which approved a larger GFA (and hence FSR) within a larger building envelope than that being sought by this new Development Application.

Future Development

- The proposed development will allow for the modernization of the split-level dwelling, providing a modern, open floor plan, with the principal living areas on the ground floor and the bedrooms on the first floor.
- This represents an efficient use of an existing developed site, with all services readily available.
- The built form proposed is consistent with other dwellings in the locality,
- Given the site context, the proposed variation is considered minor and reasonable, in that it complies with the 300m² GFA permitted by the Manly DCP for undersized lots and does not result in any unreasonable impacts to neighbouring properties.
- The proposed works will not hinder any future development of the lot or surrounding dwellings,
- The alterations proposed demonstrate fulfillment of clause 1.3(a), (b), (c) and (g).

Consistent with Zone Objectives

- The extent of the variation is considered to be in the public interest, as the proposal remains consistent with the objectives of the zone, allowing for additional residential floor space in a residential zone, with a bulk and scale consistent with the locality. Compliance with the FSR standard based on this would be unreasonable, with clause 1.3(c) demonstrated as fulfilled.

Natural Environment

- The proposed development allows for the current and future housing needs of the residents to be met, without developing a greenfield site, representing an efficient use of existing developed land.
- The development does not require the removal of any trees.
- The proposal allows for environmental impacts to be minimised, by locating works on an already disturbed residential lot.
- The natural environment is unaffected by the departure to the development standard and it would be unreasonable for the development to be refused on this basis with Cl 1.3(b) satisfied.

Social and Economic Welfare

- The variation to the FSR will have a positive social impact, as it will allow the housing needs of the residents to be met in their current local community, including the ability to work from home in a dedicated home office. It utilises existing services, satisfying Cl1.3(b).

Appropriate Environmental Planning Outcome

The development proposed is not an overdevelopment of the site and satisfies the objectives of the zone and the development standard as is detailed earlier in the report.

The variation to the FSR and the discussion above reflects the unique circumstances for the subject site and proposed development. The proposed development will not present with excessive bulk from the public domain and there is recent precedent of similar variations being accepted by Council.

By supporting this variation, in its current form, it is considered that an appropriate degree of flexibility be applied, which results in a reasonable built form, compliant with DCP controls and consistent with development in the locality.

The sufficient environmental planning grounds stipulated above demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the FSR variation."

Comment:

The justification provided by the applicant is supported in that the applicant's justification to contravene the FSR development standard is well founded, excluding the assertions that Council should vary the FSR development standard as variations to Clause 4.4 - Floor Space Ratio of Manly LEP 2013 have been the subject of recent precedent within the former Manly Local Government Area. Each development application is assessed on its merits and on a site-by-site basis.

It is accepted that the site is an undersized allotment, as defined by the Manly DCP 2013, and that resulting three storey built form is generally consistent with the height, scale and bulk and nearby three storey developments within the visual catchment of the site. It is further accepted that the proposal complies with the exemption FSR provision within Clause 4.1.3.1 - 'Exceptions to FSR for Undersized Lots' of the Manly DCP 2013.

Furthermore, it is also accepted that the FSR breach does not have an adverse impact upon the natural environment, including the amenity of adjacent properties. The proposal is also considered to demonstrate consistency with the objectives of the FSR standard and zone objectives, thereby ensuring the development is in the public interest.

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

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

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

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

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

Comment:

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

Objectives of development standard

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

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

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

Comment:

The proposal will maintain a part 2-3 storey appearance, which is consistent with the height of the existing dwelling house and scale of nearby dwellings within the visual catchment of the site. Furthermore, the new rear additions maintain the existing side boundary setbacks, including increased setbacks on the upper floor, to ensure the additional bulk is generally concealed by the existing building.

In addition to the above, Clause 4.1.3.1 - 'Exceptions to FSR for Undersized Lots' of the Manly DCP 2013 stipulates that the site is an undersized allotment and that the 0.4:1 FSR requirement is typically applied to sites with an average site area of 750m². When applying the proposed gross floor area of 262m² to an average site area of 750m² the proposed FSR is 0.35:1, which complies with the 0.4:1 requirement.

For the reasons outlined above, it is considered that the bulk and scale of the development is consistent with the existing and desired character of the area.

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 new rear additions maintain the existing side boundary setbacks, including increased setbacks on the upper floor, to ensure the additional bulk is generally concealed by the existing building. Thus, the FSR non-compliance will 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 development does not result in the removal of prescribed vegetation. In addition, the additions are appropriately scaled and setback from side boundaries to minimise impacts upon adjacent residential development. The development also results in a net increase in deep soil landscaping on the site and provides additional native landscape planting, in turn enhancing the landscape character of the area. Overall, the proposal will maintain an appropriate visual relationship with the surrounding built and natural environment.

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

Comment:

For the purpose of this assessment, views, solar access, visual amenity and privacy have been adopted as environmental factors that contribute to the use and enjoyment of adjoining public and private land.

Views

The proposed development does not adversely compromise views from the public domain. In relation to the development's impacts upon existing water views from various private properties on the northern side of Moore Street, Council's previous assessment (via DA2022/0005) has considered the proposal in accordance with the view sharing principles established within the NSW Land and Environment Court case of *Tenacity Consulting v Warringah [2004] NSWLEC 140*. In summary, the non-compliant FSR results in negligible to minor view loss from private properties on the northern side of Moore Street. In this case, reasonable view sharing has been achieved. This matter is discussed in further detail within the section of this report relating to Clause 3.4.3 - 'Maintenance of Views' of the Manly DCP 2013.

Solar Access

As the subject site and surrounding properties maintain a north-south aspect, the additional overshadowing created from the proposal is not confined to one particular site between 9am - 3pm on June 21. The applicant's shadow diagrams indicate that the development does not eliminate more than 1/3 of existing solar access to adjacent private open space on June 21 (winter solstice), which satisfies the Manly DCP 2013 solar access provision. In addition, adequate solar access has been maintained to windows on adjacent properties that serve habitable rooms.

Visual Amenity

As discussed above, the additional building mass is contained within the existing side boundary setbacks, including increased setbacks on the upper floor, to ensure the additional bulk is generally concealed by the existing building when viewed from the street and surrounding properties. It is considered that most observers would not find the proposed development by virtue of its visual bulk and scale offensive, jarring or unsympathetic in a streetscape context.

Privacy

The additional floor space is appropriately separated from habitable rooms and private open space on adjacent properties to ensure that reasonable levels of visual and acoustical privacy are maintained between buildings. The privacy impacts generated by the elevated decking (which is not included in the FSR calculations) is discussed later within this report.

Overall, it is considered that the FSR breach will not preclude the use or enjoyment of surrounding private and 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.

Comment:

The site is not located within a business zone or local centre.

Zone objectives

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

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

Comment:

The proposal does not alter the residential land use and thus, the development will provide for the housing needs of the community within a low density residential environment.

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

Comment:

The proposal relates to low density residential development.

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

Comment:

The proposal maintained a residential land use.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone and the objectives of Clause 4.4 of Manly LEP 2013.

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

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

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

5.21 Flood planning

The rear south-western corner of the site is identified within a 'low risk flooding precinct'. However, the proposed development, including swimming pool, is located outside of this area and not subject to any flood hazards.

6.4 Stormwater management

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

Conclusion

As demonstrated above, the proposed development is consistent with the requirements of Clause 6.4 of Manly LEP 2013.

6.9 Foreshore scenic protection area

The site is located within the Foreshore Scenic Protection Area under Manly LEP 2013. Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters:

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

Comment:

The proposed development does not compromise significant view lines from public places (i.e. road reserve) to the foreshore area. Furthermore, the site is located approximately 120m to the north of the foreshore area. The sufficient separation will ensure the development does not result in overshadowing of the foreshore area. The dwelling will retain a three storey appearance from the south and the additional building mass is contained within the existing side boundary setbacks, including increased setbacks on the upper floor, which will ensure that the height, bulk and scale of the dwelling does not detrimentally impact the visual amenity of the harbour or coastal foreshore. Overall, the proposal meets this requirement.

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

Comment:

The existing dwelling is not visually prominent when viewed from the foreshore area. The proposal maintains a three storey appearance from the south and the additional building bulk is generally contained within the existing building footprint. As such, the proposal will not detract from the scenic qualities of the coastline.

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

Comment:

The proposal does not alter the existing low density residential land use and works are considered to be suitable for the site.

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

Comment:

The proposal will not create conflicts between land and water based coastal activities.

Conclusion

As demonstrated above, the proposal satisfies the requirements of Clause 6.9 of Manly LEP 2013.

6.12 Essential services

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

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

Comment:

The aforementioned essential services are available for the proposed development. Therefore, the proposal complies with Clause 6.10 of Manly LEP 2013.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 491.5sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 950m ² of site area	1 dwelling on 491.5m ² allotment - existing and unchanged	N/A	N/A
	Dwelling Size: minimum 134sqm required (based off 5 bedrooms and 5 bathrooms)	262m ²	-	Yes
4.1.2.1 Wall Height	East: 7.7m (based on gradient 1:5)	6.1m	-	Yes
	West: 7.7m (based on gradient 1:5)	7.8m	1.3%	No*
4.1.2.2 Number of Storeys	2 storeys	3 storeys - existing, however additional floor space provided on third storey	50%	No
4.1.2.3 Roof Height	Parapet Height: 0.6m	0.4m	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	No change to existing	N/A	N/A
4.1.4.2 Side Setbacks and Secondary Street Frontages	East: 2.77m (1/3 of wall height)	1.35m (new additions lower floors) - 5.9m (new additions upper floor)	up to 51.26%	No
	West: 2.6m (1/3 of wall height)	1.65m (new additions)	36.54%	No
	Windows: no windows within 3m of side boundaries	10x new windows within 3m of side boundaries	up to 55%	No
4.1.4.4 Rear Setbacks (excluding swimming pools)	8m	13m	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% (294.9m ²) of site area	55% (268m ²)	8.9% (26.2m ²)	No**
	Open space above ground 25% (67.75sqm) of total open space	9.41% (25.5sqm) - area of ground floor elevated deck that has a 3m x 3m trafficable area	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% (108.4sqm) of proposed open space	49% (132m ²) of proposed open space	-	Yes
	2 native trees	Nil (One (1) tree has been conditioned)	100%	No***
4.1.5.3 Private Open Space	18sqm	> 18sqm	-	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	1.6m above existing ground level and 0.6m above finished ground following backfill	60%	No
	Curtilage: 1m setback from side/rear boundaries	pool decking setback 0.4m from eastern side boundary	60%	No
	Water line: 1.5m setback from side/rear boundaries	1.5m	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	-	Yes

Notes:

(*)The wall height has been measured from the underside of the ceiling on the uppermost floor to the ground level below, in accordance with the Manly DCP 2013 definition. The parapet height is excluded from the wall height measurement.

(**)Open space areas that are less than 3m x 3m in dimension have been included from the total open space calculations, in accordance with the Manly DCP 2013 total open space definition.

(***) A condition has been recommended requiring one locally native canopy tree to be planted on the site.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3 Landscaping	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	No	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4 Other Development (all LEP Zones)	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	No	Yes
4.4.5 Earthworks (Excavation and Filling)	No	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4 Environmentally Sensitive Lands	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

The following controls are of relevance when considering the proposal's impact upon the privacy of adjacent properties:

3.4.2.1 Window Design and Orientation

- a) Use narrow, translucent or obscured glass windows to maximise privacy where necessary.
b) When building close to boundaries, windows must be off-set from those in the adjacent building to restrict direct viewing and to mitigate impacts on privacy.

Comment:

There are a number of new windows within 3m of the side boundaries. However, these windows contain narrow openings, are offset from neighbouring windows serving habitable rooms and contain screening where appropriate to ensure that a reasonable level of visual privacy is maintained between buildings.

3.4.2.2 Balconies and Terraces

- a) Architectural or landscape screens must be provided to balconies and terraces to limit overlooking nearby properties. Architectural screens must be fixed in position and suitably angled to protect visual privacy.
b) Recessed design of balconies and terraces can also be used to limit overlooking and maintain privacy.

Comment:

Lower Level Balcony

The proposed development features an elevated balcony situated at RL46.52, positioned between 0.9m - 2.5 meters above the ground level below. This balcony has a trafficable area of 30m², is directly accessible from bedroom 4 on the lower level. Designed to allow the enjoyment of harbour views towards the south, the balcony is intended for entertainment and relaxation purposes.

The large setback of 7 meters from the western side boundary and the placement of the deck on the lower level will contribute to maintaining reasonable amenity for the private open space on the western adjacent property at 23 Moore Street (refer to Figure 1). Furthermore, the presence of an existing retaining wall and a high fence on the eastern side boundary (see Figure 2) ensures the preservation of reasonable privacy levels for the eastern adjacent property at 19 Moore Street.

Figure 1:

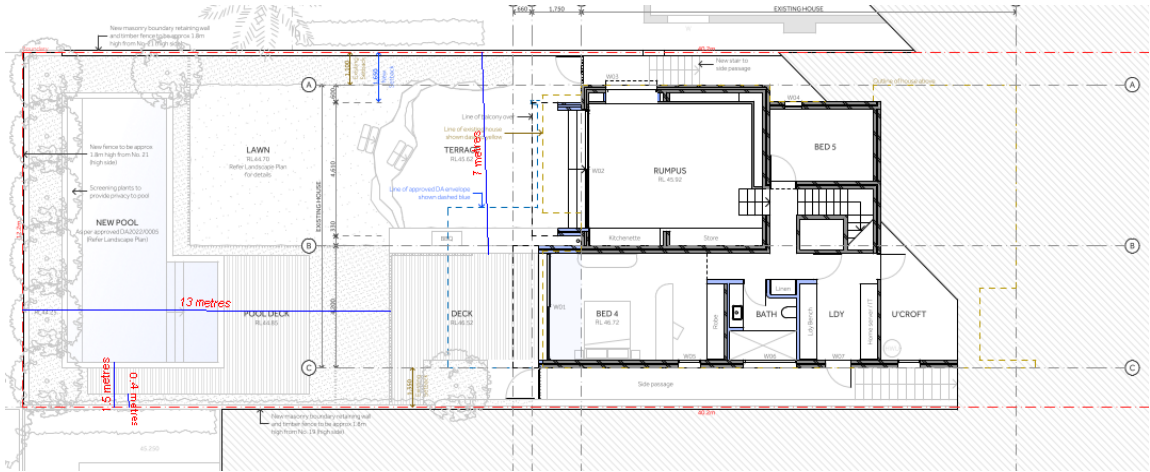


Figure 2:



3.4.2.3 Acoustical Privacy (Noise Nuisance)

a) Consideration must be given to the protection of acoustical privacy in the design and management of development.

- b) Proposed development and activities likely to generate noise including certain outdoor living areas like communal areas in Boarding Houses, outdoor open space, driveways, plant equipment including pool pumps and the like should be located in a manner which considers the acoustical privacy of neighbours including neighbouring bedrooms and living areas.*
- c) Council may require a report to be prepared by a Noise Consultant that would assess likely noise and vibration impacts and may include noise and vibration mitigation strategies and measures.*

Comment:

Adequate separation has been afforded from the opposing areas of private open space to ensure that a reasonable level of acoustical privacy is maintained. In addition, a condition has been recommended limiting all sound producing plant, equipment, machinery or fittings to no more than 5dB (A) above the background level when measured from any property boundary and/or habitable rooms.

Conclusion

Having regard to the above assessment, it is concluded that the proposal will satisfy the requirements of this control.

3.4.3 Maintenance of Views

Following the public exhibition period and up till the preparation of this report no submissions were received from adjoining and/or surrounding properties.

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

Description of non-compliance

The maximum wall height permitted by this control is determined by the slope of the land. The slope of the land along the northern and southern elevations is as follows:

- Eastern elevation: 1:5 gradient, which permits a 7.7m wall height.
- Western elevation: 1:5 gradient, which permits a 7.7m wall height.

The maximum wall height of the proposed development is 6.1m on the eastern elevation which is compliant with the numeric requirement and 7.8m on the western elevation, which does not satisfy the numeric requirement.

***Note:** wall height is measured from the underside of the ceiling on the uppermost floor to the existing ground level. The parapet height is excluded, in accordance with the Manly DCP 2013 wall height definition.*

Merit consideration

There are no underlying objectives of this control under which to consider the merits of this variation. This clause instead relies on the objectives for the Height of Buildings at Clause 4.3 in the Manly LEP 2013. An assessment against these objectives is as follows:

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

Comment:

The proposed development complies with the height of buildings development standard and the roof form descends in height at the rear of the addition to correspond with the slope of the land. The dwelling house also remains three storeys in height, which is commensurate with the height and scale of surrounding dwelling houses on Moore Street.

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

Comment:

The proposal will maintain a part 2-3 storey appearance, which is consistent with the height and scale of the existing dwelling house and nearby dwellings within the visual catchment of the site. Furthermore, the new rear additions maintain the existing side boundary setbacks, including increased setbacks on the upper floor, to ensure the additional bulk is generally concealed by the existing building.

(c) to minimise disruption to the following—

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

Comment:

It is considered that a reasonable view-sharing outcome has been achieved, and compliance with Clause 3.4.3 Maintenance of Views of the Manly Development Control Plan (MDCP) is met.

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

Comment:

As the subject site and surrounding properties maintain a north-south aspect, the additional overshadowing created from the proposal is not confined to one particular site between 9am - 3pm on June 21. The applicant's shadow diagrams indicate that the development does not eliminate more than 1/3 of existing solar access to adjacent private open space on June 21 (winter solstice), which satisfies the Manly DCP 2013 solar access provision. In addition, adequate solar access has been maintained to windows on adjacent properties that serve habitable rooms.

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

Comment:

The site is not located within a recreation or environmental protection zone. Hence, this objective is not relevant to this application.

Conclusion

Having regard to the above assessment, it is concluded that the objectives of the control are achieved. Therefore, the application is supported on merit in this particular circumstance.

4.1.3 Floor Space Ratio (FSR)

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

It is noted that the site is an 'undersized allotment' as defined under this control, noting that the 0.4:1 FSR standard within the locality is based off an average allotment of 750m². The site is an undersized allotment, being 491.5m² in area. When applying a gross floor area to an average site area of 750m², the proposed FSR would be 0.35:1, which complies with the 0.4:1 requirement.

The proposal therefore complies with this DCP exemption provision.

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

Description of non-compliance

Side Setbacks

The control requires development to be setback at least 1/3 of the adjacent wall height from side boundaries. In applying this principle, development must be setback 2.77m from the eastern side boundary and 2.6m from the western side boundary in order to satisfy the numeric requirement.

The proposed development is setback as follows:

- Eastern elevation: 1.35m (lower and middle floors) - 5.9m (new additions on first floor).
- Western elevation: 1.65m (new additions on all floors).

The proposal therefore fails to satisfy the numeric requirement.

Windows

The control stipulates that windows to habitable rooms must be setback at least 3m from side boundaries. The proposal includes (10) new windows within 3m of the eastern and western side boundaries, which does not satisfy the prerequisite.

Merit consideration:

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

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

Comment:

The proposal will maintain a part 2-3 storey appearance, which is consistent with the height of the existing dwelling house and scale of nearby dwellings within the visual catchment of the site. Furthermore, the new rear additions maintain the existing side boundary setbacks, including increased setbacks on the upper floor, to ensure the additional bulk is generally concealed by the existing building. The development also incorporates additional native landscape treatment to enhance the landscaped character of the street.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

As discussed earlier within this report, the proposed development does not result in unreasonable overshadowing of adjacent properties and provides a reasonable view sharing outcome. The offending windows within 3m of the side setback areas contain narrow openings, are offset from neighbouring windows serving habitable rooms and contain screening where appropriate to ensure that a reasonable level of visual privacy is maintained between buildings. It is considered that the deck on the lower floor has minimal impacts given its low height, substantial side setback from the western side boundary and proximity of low usage rooms (bedroom 4) adjacent to the deck. Additionally, the small balcony on the first floor will be screened full height on both elevations to ensure reasonable privacy levels to the adjoining properties.

In addition to the above, whilst the proposal varies the numeric side setback requirements, the new additions maintain the existing side setbacks of the building, including the provision of additional setbacks on the upper level. This will ensure the development does not detract from the existing rhythm or pattern of spaces with regards to side setbacks. The proposal will also not preclude safe traffic conditions along Moore Street.

Overall, the proposal achieves this objective.

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

Comment:

Flexibility is afforded with regards to the side setback requirements as the non-compliance does not give rise to unreasonable amenity or streetscape impacts.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposal does not necessitate the removal of significant landscape or topographic features. In addition, the proposal complies with the Manly DCP 2013 landscaped area numeric requirement and provisions additional native planting on the site. Adequate areas of outdoor open space are also provided to meet the recreational needs of the occupants within the dwelling.

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

Comment:

The site is not bushfire prone.

Conclusion

Having regard to the above assessment, it is concluded that the objectives of the control are achieved. Therefore, the application is supported on merit in this particular circumstance.

4.1.5 Open Space and Landscaping

Description of non-compliance

The control requires at least 60% (294.9m²) of the site area to consist of total open space (TOS). To be included as TOS open space areas must be at least 3m x 3m in dimension and must not relate to parking structures or vehicular access. The application proposes 55% (268m²) of the site area as TOS, which does not satisfy the requirements of the control.

The control also requires two native canopy trees to be located on the site. The site does not contain a native canopy tree. However, a condition has been recommended requiring one native canopy tree to be planted on the site.

Merit consideration:

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

Objective 1) To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.

Comment:

The proposal does not necessitate the removal of significant vegetation or topographic features on the site.

Objective 2) To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.

Comment:

The proposal complies with the Manly DCP 2013 landscaped area numeric requirement and provides additional native landscape treatment, thereby ensuring an acceptable landscaping outcome.

Objective 3) To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.

Comment:

As discussed earlier within this report, the proposal will not result in unacceptable amenity impacts, subject to recommended conditions.

Objective 4) To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.

Comment:

Suitable conditions have been recommended with this consent to ensure that stormwater is adequately managed.

Objective 5) To minimise the spread of weeds and the degradation of private and public open space.

Comment:

The proposal will not lead to a significant spread of weeds.

Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.

Comment:

The proposed development does not have an adverse impact upon wildlife corridors.

Conclusion

Having regard to the above assessment, it is concluded that the objectives of the control are achieved. Therefore, the application is supported on merit in this particular circumstance.

4.1.9 Swimming Pools, Spas and Water Features

Description of non-compliance

The swimming pool decking is setback 0.4m from the eastern side boundary, which does not comply with the 1m requirement for swimming pool concourses. Furthermore, the finished floor level of the pool concourse is sited 1.6m above the existing ground level, which does not comply with the 1m restriction. However, as fill is proposed within the rear yard the finished floor level will only be 0.6m above the finished ground level.

Merit consideration

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

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

Comment:

The swimming pool is adequately setback from the rear boundary and screen planting is proposed around the perimeter of the swimming pool to prevent overlooking to downslope properties. This will be further assisted by the 1.8m high pool fencing at the rear. In relation to the side setback issue, the swimming pool is located below a large retaining wall that divides the subject site and 19 Moore Street (eastern adjacent site). This will prevent direct overlooking between the opposing swimming pool areas.

Furthermore, a condition has been recommended which seeks to limit the noise of sound producing plant to no more than 5dB (A) above the background level, which will minimise the impact of the filter noise on adjoining properties. Overall, the proposal meets this objective.

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

Comment:

The pool is located in the rear yard and will not adversely impact upon the streetscape.

Objective 3) To integrate landscaping.

Comment:

The applicant proposes additional native landscape treatment on the site. Furthermore, a condition has been recommended by Council's Landscape Officer that requires a local native canopy tree to be planted on the site.

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

Comment:

The site is not bushfire prone.

Conclusion

Based on the above assessment, it is concluded that the objectives of the control are achieved. Therefore, the application is supported on merit in this particular circumstance.

4.4.2 Alterations and Additions

The control stipulates that if alterations and additions involve demolition of more than half of the building then the development will be assessed as new work and the controls of this plan will apply to the whole building. In assessing this particular application, it is noted that the proposed development does not demolish more than half of the existing dwelling house and thus, the proposal satisfies the requirement of this control.

Furthermore, a review of the plans and supporting documentation against the Demolition Planning Principle established in the NSW Land and Environment Court Case of *Coorey v Municipality of Hunters Hill [2013] NSWLEC 1187* has concluded that the proposed development has been appropriately categorised as 'alterations and additions'.

4.4.5 Earthworks (Excavation and Filling)

Description of non-compliance

The proposal involves filling within the rear yard of the property to a height of approximately 1.8m, which exceeds the 1m requirement.

Merit consideration

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

Objective 1) To retain the existing landscape character and limit change to the topography and vegetation of the Manly Local Government Area by:

- *Limiting excavation, "cut and fill" and other earthworks;*
- *Discouraging the alteration of the natural flow of ground and surface water;*
- *Ensuring that development not cause sedimentation to enter drainage lines (natural or otherwise) and waterways; and*
- *Limiting the height of retaining walls and encouraging the planting of native plant species to soften their impact.*

Comment:

The filling within the rear yard is not considered to be excessive given the circumstances of the site. Moreover, the application has been accompanied by a Geotechnical Report (prepared by White Geotechnical Group, dated 9 December 2021) plus Comments on Updates to Plans dated 23 October 2023 which states that the proposal will achieve an acceptable level of risk, subject to adherence to the recommendations stipulated within the report. A condition has been recommended which seeks to ensure compliance with the recommendations within the Geotechnical Report and Comments on Updates to Plans.

Conclusion

Having regard to the above assessment, it is concluded that the objectives of the control have been achieved. Therefore, the application is supported on merit in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$8,100 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$810,000.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environment Plan 2013 seeking to justify a contravention of Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

2) The proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development

within the zone in which the development is proposed to be carried out.

PLANNING CONCLUSION

The proposed development involves alterations and additions to an existing dwelling house including a swimming pool.

The proposed FSR equates to 0.53:1 (262m²), which represents a 33.26% variation to the development standard. Despite this, the proposed development complies with the Manly DCP 2013 undersized allotment provision for the purposes of calculating FSR and the numeric non-compliance to the FSR development standard does not result in an unacceptable environmental planning outcome.

The application was exhibited for fourteen (14) days and no submissions were received in response.

When considered on its merits, the proposed development is found to be acceptable and worthy of support. Suitable conditions have been recommended with this consent to negate any adverse impacts to neighbouring properties. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2023/1578 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 7 DP 2610, 21 Moore Street, CLONTARF, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA-04	A	Lower Level Demolition Plan	Natalie Sciberras	15 October 2023
DA-05	A	Ground Level Demolition Plan	Natalie Sciberras	15 October 2023
DA-06	A	Upper Level Demolition Plan	Natalie Sciberras	15 October 2023
DA-07	A	Roof Level Demolition Plan	Natalie Sciberras	15 October 2023
DA-08	A	Site & Roof Level Plan	Natalie Sciberras	15 October 2023
DA-09	A	Lower Level Plan	Natalie Sciberras	15 October 2023
DA-10	A	Ground Level Plan	Natalie Sciberras	15 October 2023
DA-11	A	Level 1 Plan	Natalie Sciberras	15 October 2023
DA-12	A	East Elevation	Natalie Sciberras	15 October 2023
DA-13	A	West Elevation	Natalie Sciberras	15 October 2023
DA-14	A	North & South Elevations	Natalie Sciberras	15 October 2023
DA-15	A	Street Elevations	Natalie Sciberras	15 October 2023
DA-16	A	Section A-A	Natalie Sciberras	15 October 2023
DA-17	A	Section B-B	Natalie Sciberras	15 October 2023
DA-18	A	Landscape Plan	Natalie Sciberras	15 October 2023
DA-24	A	Schedule of Materials, Colours & Finishes	Natalie Sciberras	15 October 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document/Submitted
BASIX Certificate (A1374132)	1	Rod Pindar	27 October 2023
21 Moore Street, Clontarf (Geotech Comments on Updated to Plans)	1	White Geotechnical Group	23 October 2023
Geotechnical Investigation	1	White Geotechnical Group	9 December 2021
Waste Management Plan	1	-	8 November 2023

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

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

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

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Received
Ausgrid	Ausgrid Referral Response	5 December 2023

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

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

3. Prescribed Conditions

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

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

4. General Requirements

- (a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

 - 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).
- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the following is required:
 - i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
 - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
 - iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

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

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

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

5. Retaining Walls not to encroach over Property Boundaries

The retaining walls nominated on the plans must be located wholly within the property boundaries. The retaining walls must not encroach onto adjoining land.

Reason: To ensure works do not encroach onto adjoining land.

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$8,100.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$810,000.00.

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

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

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

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

7. Security Bond

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

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

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

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

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

8. Stormwater Disposal

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent generally in accordance with the concept plans by Quantum Engineers, drawing number 210336 D1, D2, D3, D4, D5, D6 Issue D dated 27/10/2023 and in accordance with AS/NZS 3500 and Council's Water Management for Development Policy, prepared by an appropriately qualified and practicing Civil or Hydraulic Engineer who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG), indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments.

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

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

9. Installation and Maintenance of Sediment Control

Prior to any works commencing on site, including demolition, an erosion and sediment control plan must be prepared by a suitably qualified person in accordance with the following documents and provided to the Principal Certifier:

1. Council's relevant development control plan,
2. The guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the Blue Book) (as amended from time to time), and
3. The 'Do it Right On-Site, Soil and Water Management for the Construction Industry' (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust) (as amended from time to time).

Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To ensure no substance other than rainwater enters the stormwater system and waterways.

10. Compliance with Standards

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

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

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

11. External Finishes to Roof

The external finish to the roof shall have a Solar Absorptance (SA) greater than 0.46 in accordance with the requirements of the BASIX Certificate to minimise solar reflections to neighbouring properties. Any roof with a metallic steel or reflective finish is not permitted.

Green roofs and areas where solar panels (PV) are installed are excluded from conforming to the SA range.

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

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

12. Sydney Water "Tap In"

The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will

affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifying Authority demonstrating the works are in compliance with Sydney Water requirements.

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

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

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

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

13. Structural Adequacy and Excavation Work

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

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

Reason: To provide public and private safety.

DURING BUILDING WORK

14. Tree and Vegetation Protection

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

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

b) tree protection shall be undertaken as follows:

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

c) the Principal Certifier must ensure that:

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

Reason: Tree and vegetation protection.

15. Road Reserve

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

Reason: Public safety.

16. Removing, Handling and Disposing of Asbestos

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

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

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

17. Geotechnical Requirements

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

works.

Reason: To ensure geotechnical risk is mitigated appropriately.

18. **Demolition Works - Asbestos**

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifier, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

19. **Survey Certificate**

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

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier.

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

20. **Waste Management During Development**

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

Details demonstrating compliance must be submitted to the Principal Certifying Authority.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

21. **Landscape Completion**

- a) landscape works are to be implemented in accordance with the approved Landscape Plan(s) (drawing DA-18 by Natalie Sciberras dated 15/10/23), and inclusive of the following conditions:
 - i) landscape works are to be contained within the legal property boundaries,
 - ii) planting shall be installed as indicated on the approved Landscape Plan(s) unless otherwise imposed by any conditions,
 - iii) one native tree capable of attaining at least 6 metres in height at maturity shall be planted within the property to either the front or rear, and shall be selected from Northern Beaches Council's Native Plant Species Guide - Manly Ward, or the Tree Guide, and the following trees are suggested for consideration: Blueberry Ash - *Elaeocarpus reticulatus*; Saw-tooth Banksia - *Banksia serrata*; Magenta Lilly Pilly - *Syzygium paniculatum*; Golden Penda - *Xanthostemon chrysanthus*; Weeping Lillypilly - *Waterhousea floribunda*,
 - iv) all tree planting shall meet the requirements of Natspec - Specifying Trees, and shall be planted into a prepared planting hole 1m x 1m x 600mm depth generally, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established, and shall be located at least 3.0 metres from buildings, and at least 1.5 metres from common boundaries, and located either within garden bed or within a prepared bed within lawn,
 - v) mass planting to the front, central and rear gardens as shown shall include shrub planting at minimum 1 metre intervals and a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and all other plants at minimum 4 plants per metre square at a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,
 - vi) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces,
 - vii) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone.

b) prior to the issue of an Occupation Certificate, details (from a landscape architect, landscape designer or qualified horticulturalist) shall be submitted to the Principal Certifier, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

22. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified Civil Engineer.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development.

23. Geotechnical Certification Prior to Occupation Certificate

A Geotechnical Engineer or Engineering Geologist is to provide written confirmation that they have inspected the site during construction or reviewed information relating to the construction and that they are satisfied that development referred to in the development consent has been constructed in accordance with the intent of the Geotechnical Report referenced in Condition 1 of this consent. Written certification is to be provided to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

24. Swimming Pool Requirements

The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited to):

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2009;
- (iii) Swimming Pools Regulation 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifying Authority, certifying compliance with Australian Standard 1926.

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system. Appropriate instructions of artificial resuscitation methods.

(d) A warning sign stating 'YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL' has been installed.

(e) Signage showing resuscitation methods and emergency contact

(f) All signage shall be located in a prominent position within the pool area.

(g) Swimming pools and spas must be registered with the *Division of Local Government*.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of an Interim / Final Occupation Certificate.

Reason: To protect human life (DACPLF09)

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

25. Landscape Maintenance

a) if any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components.

b) trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

c) if any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan(s) and any conditions of consent.

d) the approved landscape planted areas, whether containing lawn, gardens or planters shall in perpetuity remain as planting under the development consent, and shall not be replaced with any hard paved surfaces or structures.

Reason: To maintain local environmental amenity.

26. Swimming Pool/Spa Motor Noise

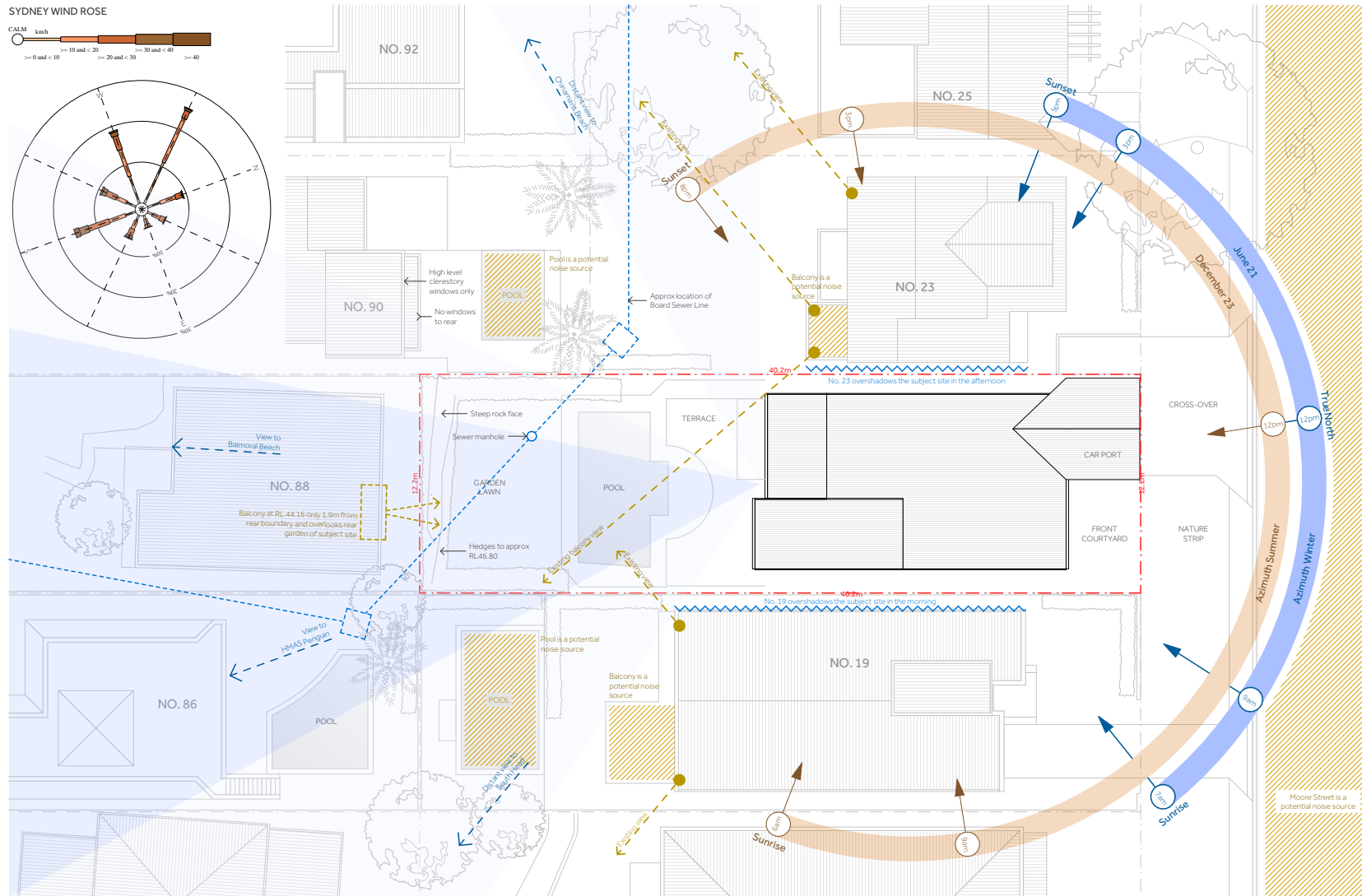
The swimming pool / spa motor shall not produce noise levels that exceed 5dB(A) above the background noise when measured from the nearest property boundary.

Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.

27. Lower Ground Floor not to be used for Separate Occupancy

The lower ground floor of the dwelling house is not permitted to be used, or adapted to be used, for separate occupancy.

Reason: Nothing in this consent authorises the use of the site or any onsite structures as detailed on the approved plans for any land use of the site beyond the definition of a dwelling house.



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Clontarf
client Rod & Natalie Pindar

Do not scale these drawings. Verify all dimensions on site.

title
scale
date
drawing no.
issue

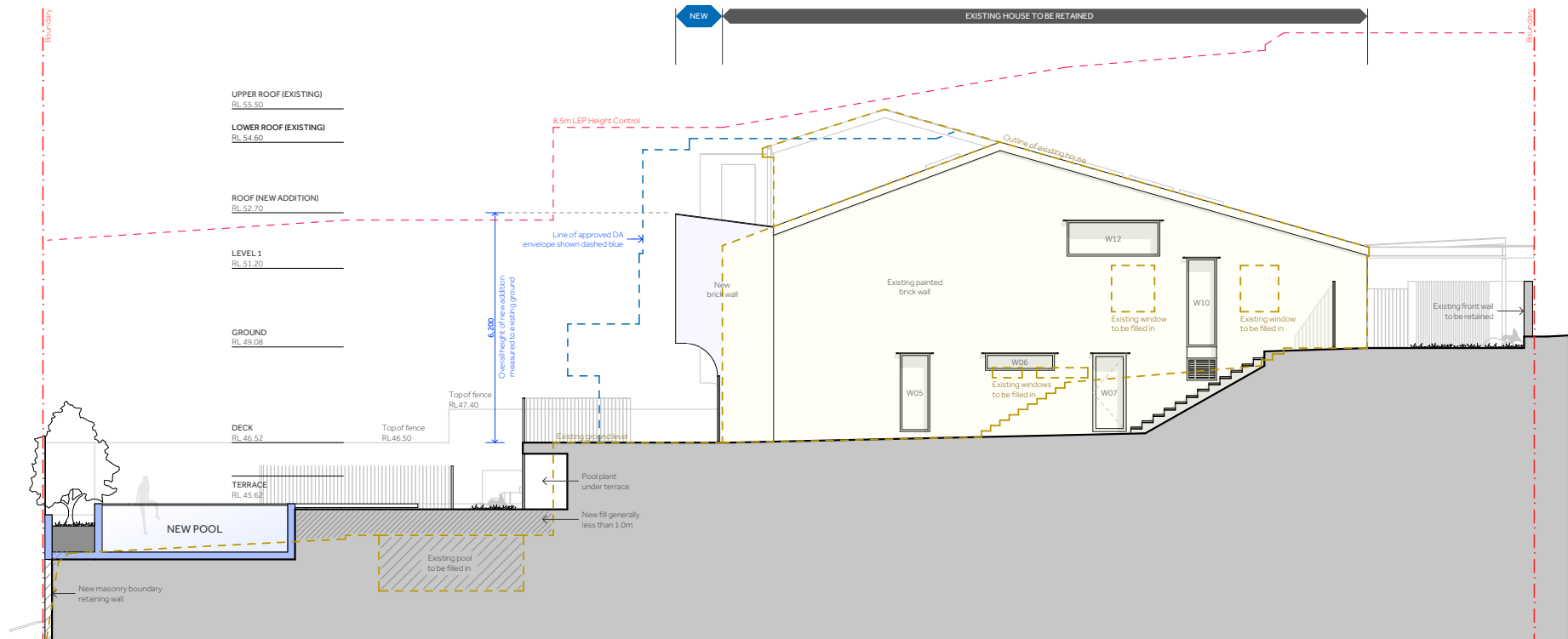
Site Analysis

1:200 @ A3

15 October 2023

DA-03

A



Natalie Sciberras

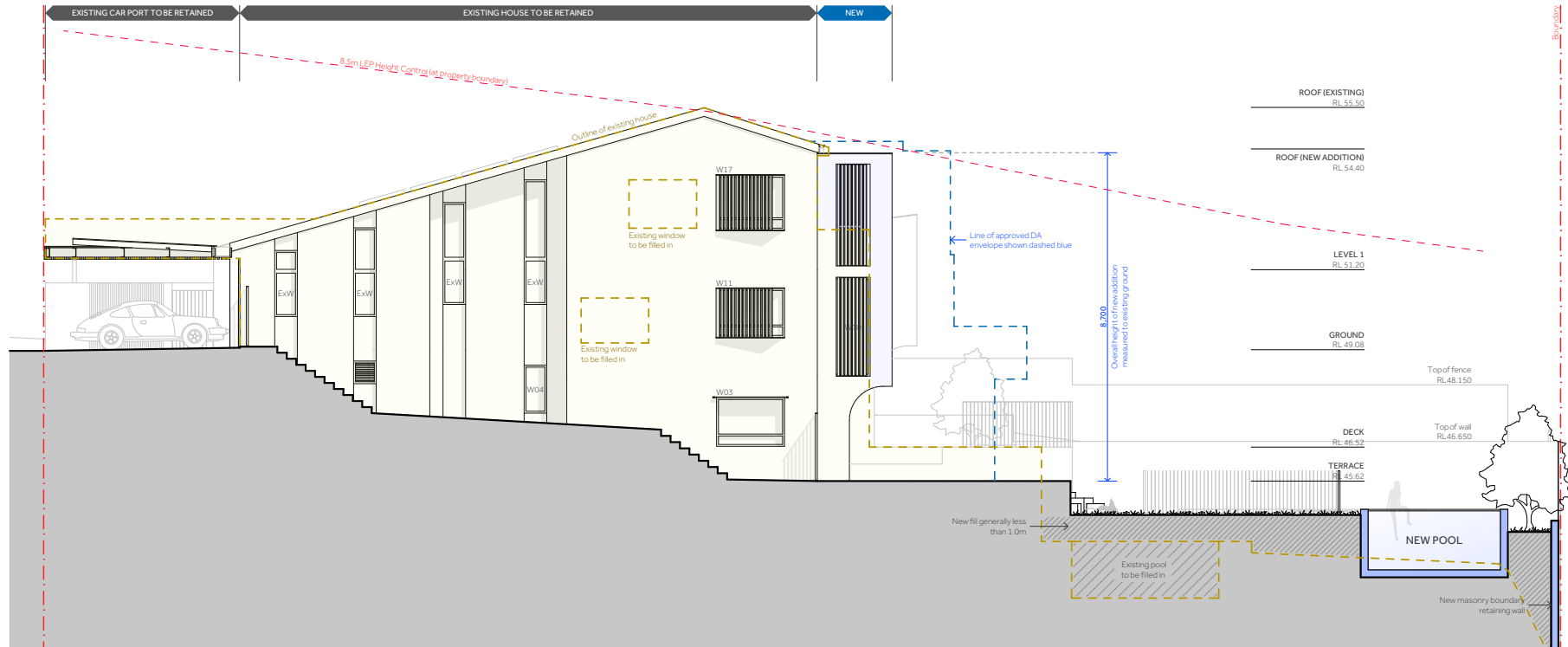
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title East Elevation
scale 1:100 @ A3
date 15 October 2023
drawing no. DA-12
issue A



- LEGEND**
- Outline of approved DA envelope
 - Outline of existing house
 - Existing house shown in yellow
 - New additions shown in blue

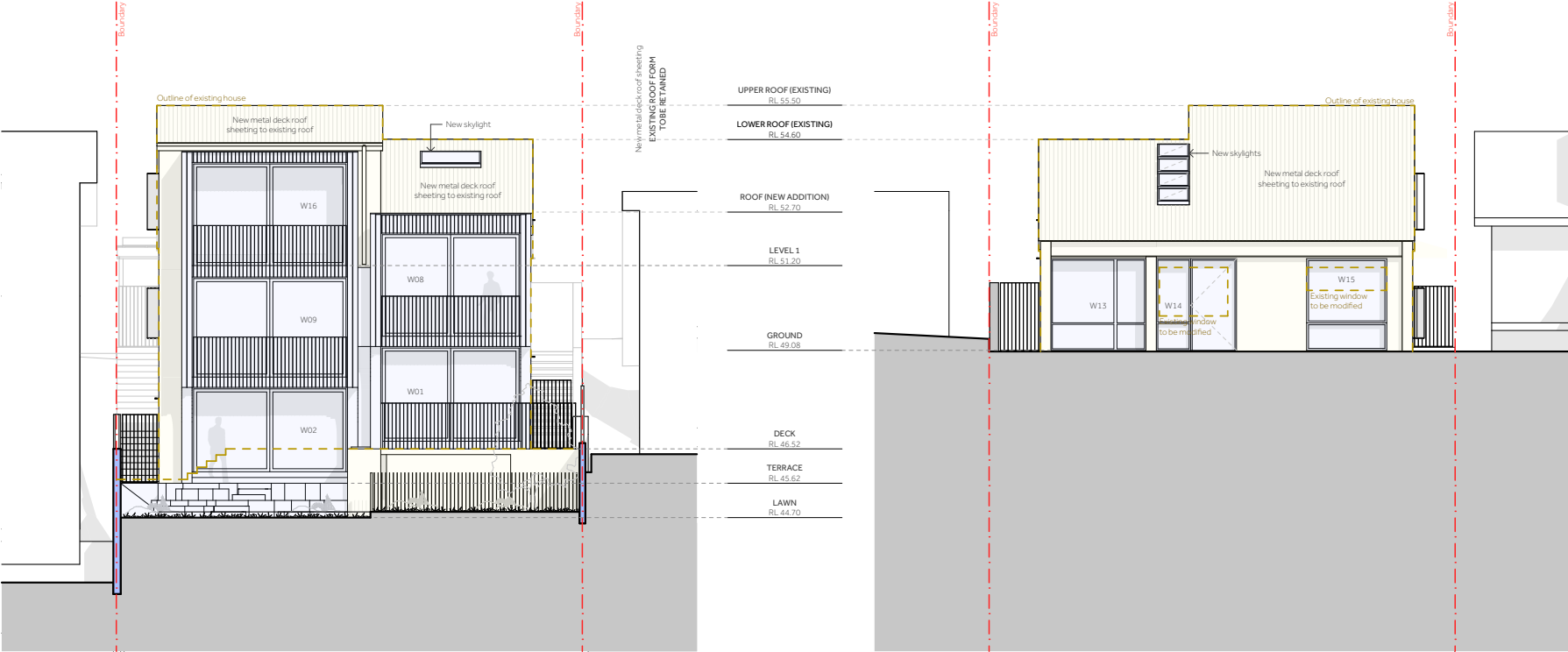
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title West Elevation
scale 1:100 @ A3
date 15 October 2023
drawing no. DA-13
issue A

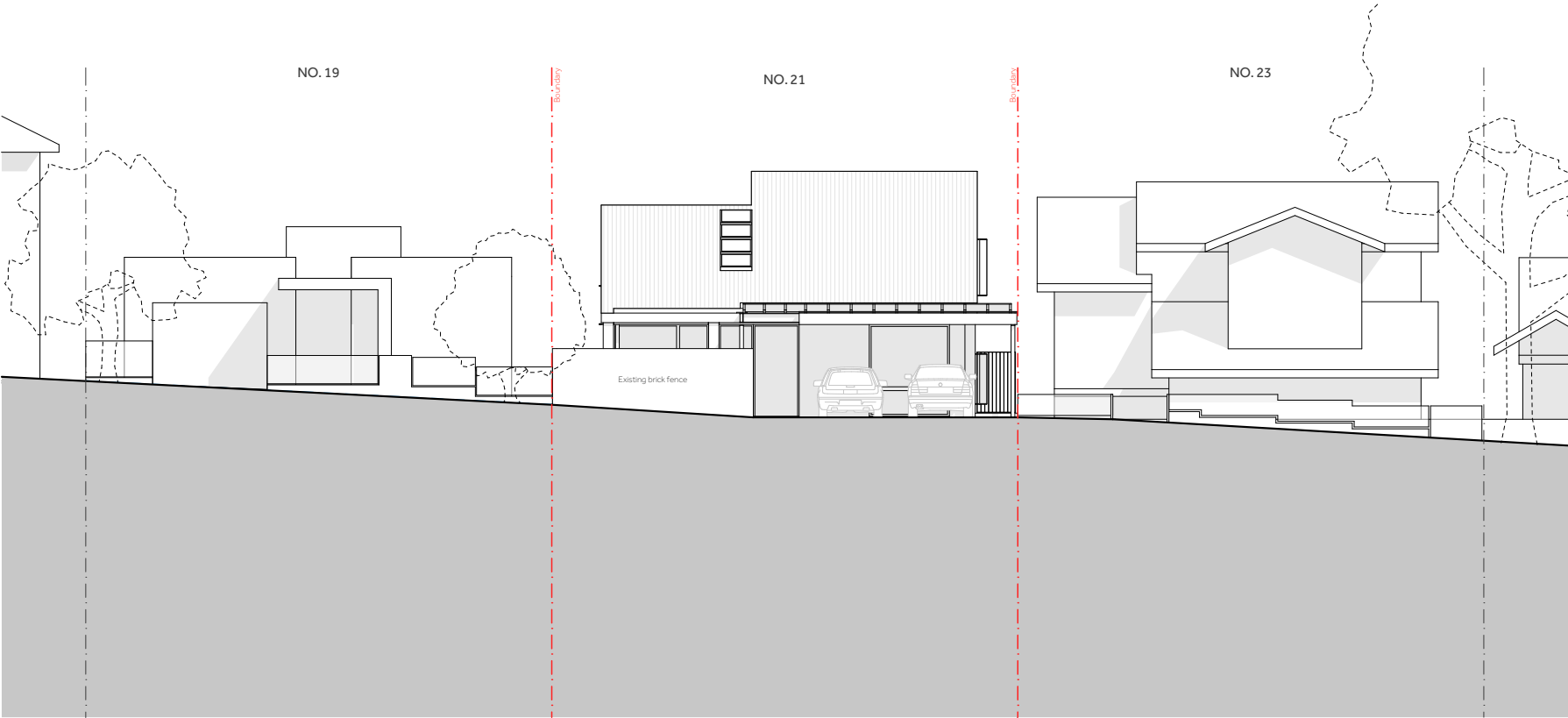


South Elevation

North Elevation

- LEGEND**
- Outline of approved DA envelope
 - Outline of existing house
 - Existing house shown in yellow
 - New additions shown in blue

Natalie Sciberras Architecture and Interior Design		project address client	Alterations & Additions 21 Moore Street Clontarf Rod & Natalie Pindar	title scale date drawing no. issue	North & South Elevations 1:100 @ A3 15 October 2023 DA-14 A
m w e	0410 605 357 www.nataliesciberras.com natalie@nataliesciberras.com	Do not scale these drawings. Verify all dimensions on site.			



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Do not scale these drawings. Verify all dimensions on site.

title Street Elevation
scale 1:100 @ A3
date 15 October 2023
drawing no. DA-15
issue A



APPENDIX ONE - CLAUSE 4.6

21 MOORE STREET CLONTARF NSW 2093

DEVELOPMENT APPLICATION
OCTOBER 2023



Appendix One - Clause 4.6

Exceptions to Development Standards – Floor Space Ratio

Clause 4.6 of the Manly Local Environmental Plan 2013 (MLEP 2013) permits departures from development standards in certain circumstances. In this case, it is necessary to consider if compliance with the development standard is consistent with the aims of the policy and, in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in section 1.3 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* being:

- a) *to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- b) *to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- c) *to promote the orderly and economic use and development of land,*
- d) *to promote the delivery and maintenance of affordable housing,*
- e) *to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- f) *to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- g) *to promote good design and amenity of the built environment,*
- h) *to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- i) *to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- j) *to provide increased opportunity for community participation in environmental planning and assessment.*

The aims and objectives of Manly LEP 2013 Clause 4.6 are as follows:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Under Clause 4.6(3) and (4) of the MLEP 2013, consent for a development that contravenes a development standard must not be granted unless the consent authority is satisfied that:

(3)(a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(3)(b) there are sufficient environmental planning grounds to justify contravening the development standard.

(4)(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out,

These matters, along with case law judgements from the NSW Land and Environment Court, are addressed below.



1. Environmental Planning Instrument Details (Manly LEP 2013)

1.1 What is the name of the environmental planning instrument that applies to the land?

Manly Local Environmental Plan 2013

1.2 What is the zoning of the land?

R2 – Low Density Residential

1.3 What are the objectives of the zone?

- + *To provide for the housing needs of the community within a low-density residential environment.*
- + *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

1.4 What is the development standard being varied?

CI 4.4 – Floor Space Ratio

1.5 Under what clause is the development standard listed in the environmental planning instrument?

CI 4.4 of the Manly Local Environmental Plan 2013

1.6 What are the objectives of the development standard?

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,*
- b) *to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
- c) *to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
- d) *to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
- e) *to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

1.7 What is the numeric value of the development standard in the environmental planning instrument?

The numeric value of the FSR development standard applicable to the subject site is 0.4:1, this equates to a maximum floor area of 196.6m² for the site area of 491.5m².

The Manly DCP permits a GFA, based on a lot size of 750m², for this undersized lot, which equates to a maximum GFA of 300m².

1.8 What is proposed numeric value of the development standard in your development application?

The development proposes a maximum floor area of 262m² or FSR of 0.53:1.

1.9 What is the percentage variation (between your proposal and the environmental planning instrument)?

The percentage variation sought is 33.2% or 65.4m² to the LEP control. The Manly DCP provides exceptions to floor space ratio for undersized lots. The subject site is an undersized lot, mapped with a minimum lot size of 950m² and comprising an area of 491.5m², as such it qualifies for consideration as an exception.

In this regard the DCP permits an FSR calculation based on a 750m² lot size, which equates to 300m² for the site. As noted above, the proposed gross floor area is 262m² and therefore complies with the provision of DCP Clause 4.1.3.

Development Approval has already been granted for the site (DA2022/0005) which approved an area of 284m² (0.58 FSR). This new Development Application represents a more modest application with reduced area, height, bulk and scale and retaining a significantly greater portion of the original house.



2. NSW Land and Environment Court Case Law

Several key Land and Environment Court (NSW LEC) judgements have refined the manner in which variations to development standards are required to be approached. The key findings and direction of each of these matters are outlined in the following discussion.

2.1 *Wehbe v Pittwater* [2007] NSW LEC 827

The decision of Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827, (expanded on the findings in *Winten v North Sydney Council*), identified 5 ways in which the applicant might establish that compliance with a development standard is unreasonable or unnecessary. It was not suggested that the five ways were the only ways that a development standard could be shown to be unreasonable or unnecessary.

The five ways outlined in *Wehbe* include:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Way).*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Way).*

In the *Micaul* decision Preston CJ confirmed that the requirements mandated by SEPP 1 (as discussed in *Wehbe*) are only relevant in demonstrating that compliance with a development standard is unreasonable or unnecessary for the purpose of Clause 4.6(3)(a).

2.2 *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LEC

In the matter of *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LEC, initially heard by Commissioner Pearson, upheld on appeal by Justice Pain, it was found that an application under Clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe v Pittwater* [2007] NSW LEC 827 and demonstrate the following:

1. Compliance with the particular requirements of Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;
2. That there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity);
3. That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site occurs;
4. All three elements of clause 4.6 have to be met and it is best to have different reasons for each but it is not essential.

2.3 *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7

In *Randwick City Council v Micaul Holdings*, the Court allowed a departure from development standards, provided the processes required by clause 4.6 are followed, a consent authority has a broad discretion as to whether to allow a departure from development standards under clause 4.6, even where the variation is not justified for site or development specific reasons.

Preston CJ noted that *the Commissioner did not have to be satisfied directly that compliance with each development standard was unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the appellant's written request had adequately addressed the matter in clause 4.6(3)(a) that compliance with each development standard was unreasonable or unnecessary.*



2.4 Zhang v City of Ryde

Commissioner Brown reiterated that clause 4.6 imposes three preconditions which must be satisfied before the application could be approved:

1. The consent authority must be satisfied that the proposed development will be consistent with the objectives of the zone;
2. The consent authority must be satisfied that the proposed development will be consistent with the objects of the standard which is not met; and
3. The consent authority must be satisfied that the written request demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances and there are sufficient environmental planning grounds to justify contravening the development standard.

It is only if all of these conditions are met that consent can be granted to the application, subject to an assessment of the merits of the application.

The Commissioner applied the now familiar approach to determining consistency with zone objectives by considering whether the development was antipathetic to the objectives.

In contrast to four2five, the reasons relied on to justify the departure from the standards in this case were not necessarily site specific.

2.5 Action Pty Ltd v Woollahra Municipal Council [2018]

In Action Pty Ltd v Woollahra Municipal Council, the court demonstrated the correct approach to the consideration of clause 4.6 requests, including that the clause does not require that a development that contravenes a development standard, must have a neutral or better environmental planning outcome than one that does not.

3. Consideration

The following section addresses the provisions of clause 4.6 of the MLEP 2013 together with principles established in the NSW Land and Environment Court Case Law outlined above.

Clause 4.6(3)(A) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (and is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case)?

In order to demonstrate that compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case, the Five (5) Part Test established in *Winten v North Sydney Council* and expanded by Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827 is considered:

The five ways outlined in *Wehbe* include:

3.1 Five (5) Part Test - Wehbe v Pittwater

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).

The objectives of the standard are:

(a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character;

Comment:

The proposed development is for alterations and additions to the existing dwelling including a minor extension to the south (rear) and a relocation of the swimming pool. The new works comply with the building height control for the site and the bulk and scale is of a lesser or consistent scale with surrounding properties.

The proposed variation to the LEP control is 65.4m² or 33.2%, however as the subject site is an existing undersized parcel, clause 4.1.3 of the DCP, permits an FSR calculation based on a 750m² lot size, which



equates to 300m² for the site. As noted above, the proposed gross floor area is 262m² and therefore complies with the provision of DCP Clause 4.1.3 having a GFA 38m² less than permitted.

Development Approval has already been granted for the site (DA2022/0005) which approved an area of 284m² (0.58 FSR). This new Development Application represents a more modest application with reduced area, height, bulk and scale and retaining a significantly greater portion of the original house.

It is considered this objective is met, despite the numerical variation.

(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 built form and massing will be of a consistent or lesser scale than other properties in the locality, increasing in height towards the rear of the lot to accommodate the slope of the site. As works are located to the rear of the lot, the dwelling will retain a single storey presentation to the street. The new works propose a compliant maximum building height and will not obscure any important landscape or townscape features and will not result in any view loss impacts.

It is therefore considered this objective is met, despite the numerical variation.

(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,

Comment:

The proposed development is visually appropriate for the locality and will not alter the character of the dwelling presenting to the street. Additional landscaping will be visible.

The proposed works are located at the rear of the site, on the portion of the lot that is already disturbed and it is considered the built form is consistent with new development in the locality and the existing dwelling.

In this regard, the underlying intent of this objective has been satisfied despite the numerical departure.

(d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,

Comment:

The proposed variation to floor space ratio does not result in any unreasonable environmental impacts to the amenity of adjoining dwellings. Compliant levels of solar access are maintained despite the proposed variation and there will be no unreasonable impact on views, visual privacy or acoustic privacy. In this regard, the underlying intent of this objective has been satisfied despite the numerical departure.

(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 relevant as the subject site is not located in a business zone.

2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).

This exception to development standards request does not rely on this reason.

3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).

This exception to development standards request does not rely on this reason.



4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Way).

This exception to development standards request does not rely on this reason.

5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Way).

This exception to development standards request does not rely on this reason.

This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the floor space ratio control pursuant to the First Way outlined in Wehbe.

Thus, it is considered that compliance with Clause 4.6(3)(a) is satisfied.

3.2 Clause 4.6(3)(B) – Are there sufficient environmental planning grounds to justify contravening the development standard?

There are sufficient grounds to permit the variation of the development standard. The development has been considered below with particular reference to the Objects of the Environmental Planning and Assessment Act 1979, which are accepted as the best gauge of *environmental planning grounds*. In particular:

Context

- + The area surrounding the subject site is characterised by 2 and 3 storey detached dwelling houses, with a number of dwellings having undergone recent renovations.
- + The new works propose a compliant building height and has been designed to remain consistent with the character of the existing dwelling, despite the variation to FSR, through design, architectural features and complimentary materials and colour choices.
- + Variation to the Manly LEP 2013 Cl. 4.4 FSR, control has been the subject of recent precedent for the following developments (with properties nearby the subject site in Clontarf marked in bold text):

DA Number	Address	Description	Variation
DA2022/0005	21 Moore Street CLONTARF NSW 2093	Residential - Alterations and additions	FSR Variation of 36% Control: 0.4:1 (196.6m ²) Proposal: 0.58:1 (284m ²)
DA2020/1477	53 Castle Circuit SEAFORTH NSW 2092	Residential - Alterations and additions	FSR Variation of 20% Control: 0.4:1 (153.28m ²) Proposal: 0.48:1 (283m ²)
DA2020/1487	89 Cutler Road CLONTARF NSW 2093	Residential - Alterations and additions	FSR Variation of 48.8% Control: 0.4:1 (153.28m ²) Proposal: 0.6:1 (228.1m ²)
DA2020/1657	18 Baltic Street & 2/18 Baltic Street FAIRLIGHT NSW 2094	Residential - Alterations and additions	FSR Variation of 16.85% Control: 0.6:1 (601.95m ²) Proposal: 0.7:1 (703.4m ²)
DA2021/0617	37 Radio Avenue BALGOWLAH HEIGHTS NSW 2093	Residential - Alterations and additions	FSR Variation of 11.4% Control: 0.45:1 (227.43m ²) Proposal: 0.5:1 (253.4m ²)
DA2020/1058	23 Parkview Road FAIRLIGHT NSW 2094	Residential - Alterations and additions	FSR Variation of 25.2% Control: 0.6:1 (161.22m ²) Proposal: 0.75:1 (201.8m ²)



DA2020/1372	19 - 21A Addison Road and 15 Oyama Avenue MANLY NSW 2095	Residential - Alterations and additions	FSR Variation of 20% Control: 0.6:1 (219.42m ²) Proposal: 0.72:1 (263.04m ²)
DA2020/1419	23 Crescent Street FAIRLIGHT NSW 2094	Residential - Alterations and additions	FSR Variation of 21% Control: 0.6:1 (129.5m ²) Proposal: 0.75:1 (162.3m ²)
DA2020/1745	92 Addison Road MANLY NSW 2095	Residential - Alterations and additions	FSR Variation of 31.67% Control: 0.6:1 (187.98m ²) Proposal: 0.79:1 (246m ²)
DA2020/0702	9 Steinton Street MANLY NSW 2095	Residential - Alterations and additions	FSR Variation of 22.5% Control: 0.75:1 (114.225m ²) Proposal: 0.91:1 (140m ²)
DA2020/0821	32 Beatrice Street CLONTARF NSW 2093	Residential - Alterations and additions	FSR Variation of 50.6% Control: 0.4:1 (230.28m ²) Proposal: 0.6:1 (347m ²)
DA2019/1463	95 Gurney Crescent SEAFORTH NSW 2092	Residential - Alterations and additions	FSR Variation of 59.4% Control: 0.4:1 (237.8m ²) Proposal: 0.63:1 (379m ²)
DA2020/0612	19 Sandy Bay Road CLONTARF NSW 2093	Residential - Alterations and additions	FSR Variation of 80% Control: 0.4:1 (111.6m ²) Proposal: 0.72:1 (201m ²)
DA123/2015	2 Moore Street CLONTARF NSW 2093	New dwelling	FSR Variation of 29.2% Control: 0.4:1
DA2019/0506	19 Moore Street CLONTARF NSW 2093	Residential - Alterations and additions	FSR Variation of 8% Control: 0.4:1 (196.2m ²) Proposal: 0.43:1
DA123/2017	88 Cutler Road CLONTARF NSW 2093	Residential - Alterations and additions	FSR Variation of 68.7% Control: 0.4:1 (145.2m ²) Proposal: 0.67:1 (245m ²)
DA2018/2004	92 Cutler Road, CLONTARF NSW 2093	Residential - Alterations and additions	FSR Variation of 12.5% Control: 0.4:1 Proposal: 0.45:1

- + The setting and context with similar FSR variations recently approved, demonstrates that a varied FSR is reasonable and that it is consistent with clause 1.3(c) and (d).
- + Development Approval has already been granted for the site (DA2022/0005) which approved a larger GFA (and hence FSR) within a larger building envelope than that being sought by this new Development Application.

Future Development

- + The proposed development will allow for the modernization of the split-level dwelling, providing a modern, open floor plan, with the principal living areas on the first floor and bedrooms on the ground and lower ground floors.
- + This represents an efficient use of an existing developed site, with all services readily available.
- + The built form proposed is consistent with other dwellings in the locality,
- + Given the site context, the proposed variation is considered minor and reasonable, in that it complies with the 300m² GFA permitted by the Manly DCP for undersized lots and does not result in any unreasonable impacts to neighbouring properties.
- + The proposed works will not hinder any future development of the lot or surrounding dwellings,
- + The alterations proposed demonstrate fulfillment of clause 1.3(a), (b), (c) and (g).

Consistent with Zone Objectives

- + The extent of the variation is considered to be in the public interest, as the proposal remains consistent with the objectives of the zone, allowing for additional residential floor space in a residential zone, with a bulk and scale consistent with the locality. Compliance with the FSR standard based on this would be unreasonable, with clause 1.3(c) demonstrated as fulfilled.



Natural Environment

- + The proposed development allows for the current and future housing needs of the residents to be met, without developing a greenfield site, representing an efficient use of existing developed land.
- + The development does not require the removal of any trees,
- + The proposal allows for environmental impacts to be minimised, by locating works on an already disturbed residential lot.
- + The natural environment is unaffected by the departure to the development standard and it would be unreasonable for the development to be refused on this basis with CI 1.3(b) satisfied.
- + Social and Economic Welfare
- + The variation to the FSR will have a positive social impact, as it will allow the housing needs of the residents to be met in their current local community, including the ability to work from home in a dedicated home office. It utilises existing services, satisfying CI1.3(b). Accordingly, refusal of the development based on this reason would be unreasonable.

Appropriate Environmental Planning Outcome

The development proposed is not an over development of the site and satisfies the objectives of the zone and the development standard as is detailed earlier in the report.

The variation to the FSR and the discussion above reflects the unique circumstances for the subject site and proposed development. The proposed development will not present with excessive bulk from the public domain and there is recent precedent of similar variations being accepted by Council.

By supporting this variation, in its current form, it is considered that an appropriate degree of flexibility be applied, which results in a reasonable built form, compliant with DCP controls and consistent with development in the locality.

The sufficient environmental planning grounds stipulated above demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the FSR variation.

3.3 Clause 4.6(4)(A)(iii) – Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and objectives for development within the zone which the development is proposed to be carried out.

The proposed development is consistent with the objectives of the standard (see CI 4.6(3)(A)). An assessment of consistency with the objectives of the Zone is provided below:

Zone – R2 Low Density Residential

Objectives of zone:

- + *To provide for the housing needs of the community within a low density residential environment.*

Consistent. The proposed works will allow the current and future housing needs of the residents to be met in their current local community.

- + *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Not relevant. No change of use is proposed.

The proposed development is not contrary to the public interest, because it is consistent with the objectives of the standard (see CI 4.6(3)(A)) and objectives for development within the zone.

Clause 4.6(5)(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning,

The non-compliance will not raise any matter of State or Regional Significance.



Clause 4.6(5)(b) the public benefit of maintaining the development standard,

The proposed development is not contrary to the public interest, accordingly there can be no quantifiable or perceived public benefit in maintaining the standard.

Clause 4.6(5)(c) any other matters required to be taken into consideration by the Secretary before granting concurrence

How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act.

Strict compliance with the standard would hinder the attainment of the objects specified in section 1.3 of the Act

- a) *to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- b) *to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- c) *to promote the orderly and economic use and development of land,*
- d) *to promote the delivery and maintenance of affordable housing,*
- e) *to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- f) *to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- g) *to promote good design and amenity of the built environment,*
- h) *to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- i) *to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- j) *to provide increased opportunity for community participation in environmental planning and assessment.*

Strict numerical compliance with the 0.4:1 FSR development standard would hinder the development for the purpose of *promoting the orderly and economic use and development of land, promoting good design and amenity of the built environment and promoting the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.*

The proposed development for alterations and additions to reconfigure the ground floor and extend the dwelling to the south and relocate the swimming pool, on land zoned R2 – Low Density Residential is appropriate and reasonable for the following reasons:

- + Development Approval has already been granted for the site (DA2022/0005) which approved a larger GFA (and hence FSR) within a larger building envelope than that being sought by this new Development Application,
- + There is recent precedent for similar variations to CI 4.4 FSR of the Manly LEP 2013 being accepted by Council,
- + The proposed FSR is compliant with the DCP control for undersized lots,
- + The proposed development does not present with excessive bulk and is of a consistent scale to surrounding properties. The proposal will not result in any unreasonable impacts.
- + The works proposed will allow the housing needs of the residents to be met,
- + The objectives of the R2 zone can be met despite the numerical variation.

Strict numerical compliance is considered to be unnecessary and unreasonable given that the proposed variation sought is consistent with the underlying objectives of the control despite the numerical variation, of which have been reasonably satisfied under the provisions of Clause 4.6. The statement sufficiently demonstrates that compliance with the development standard is both unreasonable and unnecessary in this instance.



The sufficient environmental planning grounds stipulated within this request, demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the FSR variation.

The proposed variation satisfies the objectives of the zone, underlying intent of Clause 4.6 and Clause 4.4, and therefore the merits of the proposed variation are considered to be worthy of approval.

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